

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 188 of 2019

Thursday, this the 28th day of March, 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

Ex. Rfn. Pratap Singh (No. 4067642A), S/o Sri Mahipal, Village Kheri Khurd, P.O. Satya Narayan Mandir, Tehsil Rishikesh, Dehradun.

..... Applicant

Ld. Counsel for the : **Col. A.K. Srivastava (Retd.)**, Advocate.
Applicant

Versus

1. The Secretary, Government of India (MoD), South Block, DHQ P.O., New Delhi-110001.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, DHQ P.O., New Delhi-110001.
3. The OC, Records the GARHWAL Rifles, Landsdown.
4. The Principal Controller of Defence accounts, PCDA (Pensions), Draupadi Ghat, Allahabad.

.....**Respondents**

Ld. Counsel for the : **Dr. Gyan Singh**,
Respondents. Central Govt. Counsel

ORDER**“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (a) *Issue/Pass an order or direction of appropriate nature to the respondents to set aside GARWAL RIFLES Records letter dated 06.06.1991 (Annexure No.A-1) along with CCDA (P) Allahabad letter No. G3/87/7540/vii dated 24/09/1987, referred therein, leading to rejection and denial of applicant’s 60% disability pension entitled w.e.f. 21/12/1986, since his disabilities were opined as neither attributable to nor aggravated by service.*
- (b) *Issue/Pass an order or direction of appropriate nature to the respondents to set aside CCDA (P) Allahabad letter No.G3/87/7540/vii dated 24/09/1991, rejecting applicant’s 60% disability pension entitled w.e.f 21/12/1986, averring that his disabilities were entither attributable to nor aggravated by service, after summoning the said letter since not received by the applicant.*
- (c) *Issue/Pass an order or direction of appropriate nature to the respondents to set aside remarks enclosed in para 4 of IMB proceedings (Annexure No. A-2) that applicant’s disabilities were neither attributable to nor aggravated by service, ignoring the fact that applicant suffered with said disabilities while serving in a Field Area.*

- (d) *Issue/Pass an order or direction of appropriate nature to the respondents to consider 60% Composite disability of the applicant, due SCHIZOPHRENIA (50%) and UNSPECIFIED SEIZUREs (6-10%), attributable to or aggravated by service since suffered with said disabilities while in a Field Area and did not have any disability at the time of enrolment and said aspect has already been adjudicated by Hon'ble Supreme Court in Dharamvir Singh v. Union of India, (2013) 7 SCC 316.*
- (e) *Issue/Pass an order or direction of appropriate nature to the respondents to grant 60% war injury/disability pension to the applicant, on being invalid out from service 20/12/1986, for 2 years with effect from 21/12/1986 to 31/12/1995, duly rounded off to appropriate percentage for life w.e.f. 01/01/1996 in terms of MoD Letter No. 1(2)/97/D (Pen-C) dated 31/01/2001 duly supported by the judgment of Hon'ble Supreme Court in Civil Appeal No. 5591 of 2006 Titled as K.J.S. Butter v. U.O.I.*
- (f) *Issue/Pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (g) *Allow this application with costs and 18% rate of compound interest.*

2. Briefly stated facts of the case are that the applicant was enrolled in GARHWAL RIFLE in Indian Army on 28.07.1984 and was invalided out of service on 20.12.1986 in Low Medical Category EEE (P) under Rule 13(3) III (iii) of the Army Rules, 1954. At the time of invaliding from service, the Invaliding Medical Board

(IMB) held at 14 Base Hospital on 21.11.1986 assessed his disabilities (i) '**SCHIZOPHRENIA ICD 295**' @50% and (ii) **UNSPECIFIED SEIZURE** @6-10%, Composite 60% for two years but opined the disabilities to be neither attributable to nor aggravated (NANA) by military service. The applicant's claim for disability pension was rejected on 24.09.1987 by the PCDA (P), Allahabad. Against the said rejection order the applicant had preferred 1st Appeal dated 23.02.2018 which was replied by the respondents vide letter dated 06.03.2018. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant i.e. '**SCHIZOPHRENIA ICD 295 and UNSPECIFIED SEIZURE**' have been compositely regarded as 60% for two years by IMB. However, since the disabilities are opined by IMB to be neither attributable to nor aggravated by military service his claim for grant of disability pension was correctly rejected. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding Medical Board proceedings. The questions which need to be answered are of two folds :-

(a) Whether the disability of applicant is attributable to or aggravated by military service?

(b) Whether the applicant is entitled for the benefit of rounding off of his disability pension, if yes, from which date?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules

and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:-

"29.1. Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service [Rule 5 read with Rule 14(b)].

29.3. The onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).

29.4. If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)]. [pic]

29.5. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [Rule 14(b)].

29.6. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

7. Thus in light of the settled position of law on attributability, we find that the IMB has denied attributability to the applicant only by

endorsing that the disabilities '**SCHIZOPHRENIA ICD 295 and UNSPECIFIED SEIZURE**' to be neither attributable to nor aggravated (NANA) by military service and not connected with service. The disability was first detected in the year 1986 whereas the applicant was enrolled in the year 1984 i.e. after about two years of military service. We are therefore of the considered opinion that the reasons given in IMB for declaring disease as NANA are very brief and cryptic in nature and do not adequately explain the decision of NANA. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of the settled law on this matter vide ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service, as such the applicant is entitled for the disability pension for two years from the date of his discharge i.e. 20.12.1986.

8. As far as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to the benefit of broad banding for period in question i.e. two years from 20.12.1986.

9. Since the applicant's IMB was valid for two years w.e.f. 20.12.1986, hence, the respondents will now have to conduct a fresh RSMB for him.

10. In view of the above, the **Original Application No. 188 of 2019** deserves to be partly allowed, hence, **partly allowed**. The impugned order dated 24.09.1987 passed by the CCDA (P) Allahabad, enclosed as CA-5 of the Counter Affidavit, is set aside. The disabilities of the applicant '**SCHIZOPHRENIA ICD 295 and UNSPECIFIED SEIZURE**' are to be considered as aggravated by military service. The applicant is held to be entitled to disability pension @60% for two years from the date of discharge of the applicant i.e. 20.12.1986. The arrears of disability pension shall however be restricted to three years before the date of filing this Original Application. Hence, the applicant will be entitled to arrears of service element only from three years from the date of filing this Original Application i.e. 13.09.2018. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element. Respondents are required to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 9% per annum till the date of actual payment.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

Dated: March, 2019

AKD/-

(Justice S.V.S. Rathore)
Member (J)