

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 330 of 2017

Tuesday, this the 26th day of March, 2019

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex Sep No. 15343712-F, Prem Veer Singh, son of Late Shri Tukman Singh, resident of village Banguri, Post Office Dinger, Tehsil Fatehabad, district Agra (UP)

.....Applicant

Ld. Counsel for : **Shri Virat Anand Singh & Shri Ashish Kumar**
the Applicant **Singh Advocates**

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ PO, New Delhi- 110011
3. OIC Records, BEG Roorkee, c/o 56 APO.
4. Addl Dte. Gen. Personnel Services, AG Branch, Integrated HQ of MoD, (Army) DHO PO New Delhi-110011.

.....Respondents

Counsel for the : **Shri Adesh Kumar Gupta,**
Respondents **Addl Central Government Counsel.**

ORDER

Delivered by Hon'ble Mr Justice SVS Rahore, (Member-J)

1. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of disability pension with the following prayers:

“(1) To kindly direct the respondents to kindly consider applicants claim of disability pension in light of Hon’ble Apex Court findings retrospectively from date of his discharge 0 26 Aug 2004.

(ii) To direct respondents to round off the disability pension (20 to 50%) of the applicant as per rounding off policy.

(iii) To direct the respondents to pay applicant all medical expenditure which he had incurred for his medical treatment during this intervening period.

(iv) To pass orders which their Lordships may deem fit and proper in the existing facts and circumstances of the case.

(e) Allow this application with costs.”

2. Before proceeding with the merits of the case, it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 11 years, 08 months and 24 days. Since payment of pension involves recurring cause of action, as such, vide order dated 25.08.2017, delay in filing the petition has been condoned. Respondents have filed counter affidavit to which learned counsel for the applicant submits that the petition can be disposed on the basis of pleadings on record, as such, with the consent of learned counsel for the parties, we proceed to hear and dispose of the petition.

3. Couched in brevity, the undisputed facts are that the applicant was enrolled in the Indian Army on 22.09.2002 as Sapper in the Bengal Engineers Group, Roorkee and was invalided out of service on 26.07.2004 under Rule 13 (3) III (iii) of the Army Rules, 1954. The Invalid Medical Board (IMB) held before discharge of the applicant considered the disability for “SEVERE DEPRESSIVE EPISODE WITH PSYCHOTIC SYMPTOMS” and opined the disease as ‘neither attributable to nor aggravated’ (NANA) by Military service and assessed it as 11 – 14 % for life. The applicant’s claim for grant of disability pension was rejected by the PCDA (P) Allahabad on the

ground that the disease with which the applicant was suffering was neither attributable to nor aggravated by military service. The applicant's First and Second Appeals for payment disability pension were rejected by the authorities vide orders dated 26.12.2008 and 30.06.2010 respectively. Aggrieved with non-payment of disability pension and rejection of the appeals, the applicant has preferred the instant O.A.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition thereafter he has been discharged in Low Medical Category, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension. It is further submitted that in view of the decision of Hon'ble Supreme Court in the case of *Sukhvinder Singh Vs Union of India and Ors* reported in 2014 STPL (WEB) 468 SC the disability assessed by the IMB @ 11 – 14 % is to deemed to be 50%.

5. The respondents have filed counter affidavit annexing thereto of the Invalid Medical Board (IMB). Learned counsel for the respondents has not disputed that the IMB has assessed the disability of the applicant to the extent of 11 - 14 % for life, but submitted that the disability due "SEVERE DEPRESSIVE EPISODE WITH PSYCHOTIC SYMPTONS" was opined by the IMB as "neither attributable to nor aggravated by military service" (NANA), as such, in terms of Para 173 of Pension Regulations, his claim has rightly been rejected. Learned counsel for the respondents further submitted that Para 173 makes it specifically clear that disability pension is

admissible to an individual who is invalided out from service on account of disability which is attributable to or aggravated by military service and is assessed by the IMB at 20% or more. Learned counsel for the respondents concluded by stating the present being a NANA case as per opinion of the IMB, the claim of the applicant for disability pension has rightly been rejected.

6. We have heard learned counsel for both the parties and have perused the copy of the IMB in detail. In the instant case, the only question which requires to be answered is as to whether the disability of the applicant is attributable to or aggravated by military service.

7. We have noticed that the only reason given by the IMB for declaring the disease as NANA is that the invaliding disease “SEVERE DEPRESSIVE EPISODE WITH PSYCHOTIC SYMPTOMS” has no connection with service conditions. We are unable to agree with this logic. While considering the question with regard to grant of disability pension, their Lordships of Hon’ble Supreme Court in the case of *Dharamvir Singh vs. Union of India & Ors*, (2013) 7 SCC 316, have laid down that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. Their Lordships further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent

is suffering is not attributable to or aggravated by military service. No doubt, the applicant has put in service of only about 01 year and 09 months. However, he is an attested soldier who successfully completed his training. The IMB has given a very cryptic statement to declare the disease as NANA and not connected with service conditions. We do not find this cryptic statement good enough to deny attributability of the disease to the applicant. Therefore, in terms of judgment of *Dharamvir Singh* (Supra), *Sukhvinder Singh vs. Union of India*, reported in (2014) 14 SCC 364, *Union of India and others vs. Angad Singh Titaria*, reported in (2015) 12 SCC 257 and *Union of India and others vs. Rajbir Singh*, reported in (2015) 12 SCC 264 and the applicant's disability "OBSESSIVE COMPULSIVE DISORDER" is to be considered as attributable to military service.

8. Adverting to the argument of learned counsel for the respondents that the disability of the applicant has been assessed by the IMB @ 11 – 14 %, as such in view of Para 172 of the Pension Regulations, the applicant is not entitled to grant of disability pension, we may cite the observations made by Hon'ble the Apex Court in the case of *Sukhvinder Singh Vs Union of India and Ors* reported in 2014 STPL (WEB) 468 SC wherein their Lordships have held as under:-

"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the

*Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. **Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.***

9. In view of observations made hereinabove, we are of the considered opinion that the cryptic reason given by the IMB declaring the disease to be NANA and not connected with service conditions is not founded on valid grounds. In view of well settled proposition of law expounded by their Lordships in the cases referred to hereinbefore, the disability suffered by the applicant is to be considered to be attributable to and aggravated by military service with disability percentage of 50% for life.

10. It is settled law that claim for pension is based on continuing wrong and the relief can be granted if such continuing wrong creates a continuing source of injury. In the case of *Shiv Dass vs. Union of India*, reported in 2007 (3) SLR 445 their Lordship's of Hon'ble Apex Court have held that if a petition for pension (disability pension in this case) is filed beyond a reasonable period, the relief prayed for may be restricted to a reasonable period of three years.

11. Accordingly the O.A. is **allowed**. The impugned order passed by the respondents is set aside. The respondents are directed to grant disability pension to the applicant @ 50 % from three years prior to

the filing of the present Original Application. The date of filing of the O.A. is 24.11.2016. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order failing which the respondents will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated: March, 2019
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