

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 823 of 2022**

Tuesday, this the 09<sup>th</sup> day of May, 2023

**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**  
**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Mahesh Chandra Pal (Ex No. 9130553-T EX-AC (U/T) S/o  
:Shri Kamle Singh, Resident of Vill: Kutubpur, Post Office:  
Madanpur, District: Firozabad - 283151 (UP)

-----Applicant

Ld. Counsel for the Applicant: **Shri R. Chandra, Advocate**

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi - 110011.
2. The Chief of the Air Staff, Air Headquarters, New Delhi - 110011.
3. Directorate of Air Veterans, Air Headquarters, SMC Building, 1<sup>st</sup> Floor, Subroto Park, New Delhi - 110010.
4. Joint CDA (Air Force), Subroto Park, New Delhi - 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani,**  
**Central Govt. Counsel.**

**ORDER(ORAL)**

**“Per Hon’ble Mr.JusticeRavindra Nath Kakkar, Member (J)”**

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

- “(I) This Hon’ble Tribunal may graciously be pleased to set aside the order dated 27.03.2018 (Annexure No A-1) and Order dated 05.08.2019 (Annexure No A-2)*
- “(II) This Hon’ble Tribunal may graciously be pleased to direct the respondents to issue a fresh PPO granting Disability Pension from 08.01.1993 (Service Element from 08.01.1993 for life and disability element from 08.01.1993 to 07.01.1995 30%) alongwith arrears of disability pension with interest at the rate of 18% per annum.*
- “(III) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.”*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 13.07.1991 and physically and mentally fit condition. During training on 23.11.1992, he was detected the disability of ‘**Neurosis (Mixed Type)**’. He was invalidated out from service on 07.01.1993 after rendering one year and 179 days of service. His disability was

assessed @ 30% for two years and considered as neither attributable to nor aggravated by military service. On the order of Hon'ble Supreme Court order dated 03.03.2017 applicant was granted disability element for two years vide PPO dated 27.03.2018. Reassessment Medical Board (RAMB) of the applicant was held at Central Command, Lucknow to reassess his medical condition for further grant of disability pension. In RAMB, disability percentage of the applicant was assessed as "Nil". The applicant filed representation before the respondents for grant of service element of disability pension for two years and thereafter disability pension for life which was rejected by the respondents vide order dated 27.03.2018 and 05.08.2019. It is in this perspective that the applicant has preferred the present Original Application for grant of service element of disability pension for two years and thereafter disability pension for life.

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 Air Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air Force. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Air Force Service. Applicant filed petition before High Court Allahabad for grant of disability pension which was transferred to this Tribunal

and renumbered as T.A. No 585 of 2010. This T.A. was dismissed on merit vide order dated 30.11.2010 stating that opinion of medical board must be given due primacy. Applicant challenged the order dated 30.11.2010 passed by this Tribunal before the Hon'ble Supreme Court in Civil Appeal No 7380 of 2014. The Hon'ble Supreme Court vide order dated 03.03.2017 condoned the Delay and directed the respondents to decide the matter of the applicant in view of judgment of ***Union of India & Others Vs Angad Singh Titaria (2015) 12 SCC 257*** within three months. In compliance of the Hon'ble Supreme Court order dated 03.03.2017, respondents issued PPO dated 27.03.2018 and granted disability element for two years from 08.01.1993 to 07.01.1995 to the applicant. Learned counsel for the applicant submitted that ***Angad Singh Titaria*** was JWO in Air Force and he was granted service pension, hence he was entitled only disability element and not disability pension. The order passed by the respondent granting disability element only to the applicant is illegal and unjust. Applicant filed contempt petition before the Hon'ble Supreme Court for grant of service element which was dismissed vide order dated 24.09.2018. Further, the applicant filed appeal before the respondents for grant of service element of disability pension which was rejected vide letter dated 05.08.2019. RAMB of the applicant was conducted at Command Hospital Lucknow on 23.09.2017 to assess his disability for grant of disability

pension beyond 08.01.1995. RAMB assessed the disability of the applicant as NIL, hence applicant was denied for grant of disability pension. Learned counsel for the applicant pleaded that various Benches of Armed Forces Tribunal have granted service element of disability pension in similar cases, as such the applicant be granted service element for two years and thereafter disability pension for the life.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in Air Force on 13.07.1991. The applicant was admitted in hospital on 07.05.1992 for Neurotic Breakdown within barely 11 months of training. He was managed with anxiolytics, antidepressants and psychotherapy with a slow and incomplete recovery. Accordingly, he was recommended to be invalided out of service in Low Medical Category EEE. His disability was assessed @ 30% for two years and regarded as NANA by the IMB. Claim of the applicant for grant of disability pension was rejected in terms of Rule 153 of Pension Regulations for IAF, 1961 (Part-1) as the applicant was not fulfilling mandatory criteria for grant of disability pension. Applicant filed petition before Hon'ble High Court Allahabad for grant of disability pension which was transferred to this Tribunal and renumbered as T.A. No 585 of 2010. This T.A. was dismissed on merit vide order dated 30.11.2010. Then the applicant approached Hon'ble Supreme Court for grant of disability pension.

Appeal filed by the applicant was disposed of with the directions to respondents to decide the case of the applicant in terms of order passed in the case of ***Union of India & Others Vs Angad Singh Titaria (2015) 12 SCC 257***. Accordingly, PPO was issued and the applicant was granted 30% disability element for two years in terms of directions of the Hon'ble Apex Court. Further, Reassessment Medical Board of the applicant was conducted on 23.09.2017. As per opinion of Senior Adviser (Psychiatry) the disability percentage of the applicant was assessed as Nil for life. Learned counsel for the respondents submitted that since ***Angad Singh Titaria (Supra)*** was granted only disability element, hence applicant was also granted disability element. The applicant has rightly been granted disability element and he is not entitled to service element for two years. Since his disability has been assessed Nil for life vide RASM dated 23.09.2017, he is not entitled for disability pension beyond 08.01.1995. He pleaded that instant O.A. has no substance and liable to be dismissed.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Re-assessment Medical Board (RAMB) proceedings as well as the records and we find that the questions which need to be answered are of threefolds:-

- (a) Whether the applicant is entitled for grant of service element for two years?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?
- (c) Whether the applicant is entitled for grant of disability pension beyond 08.01.1995?

6. Applicant has relied upon the judgment passed in the case of ***Union of India & Anr Vs Rajbir Singh***, Civil Appeal No 2904 of 2011 decided on 13.02.2015. In this case Hon'ble Apex Court has held that the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service. The Court held as under:

*"9. As regards diseases Rule 14 of the Entitlement Rules stipulates that in the case of a disease which has led to an individual's discharge or death, the disease shall be deemed to have arisen in service, if no note of it was made at the time of individual's acceptance for military service, subject to the 8 condition that if medical opinion holds for reasons to be stated that the "disease could not have been detected on medical examination prior*

*to acceptance for service, the same will not be deemed to have so arisen". .....*

*xx xx xx*

*14. The legal position as stated in Dharamvir Singh case [Dharamvir Singh v. Union of India, (2013) 7 SCC 316 : (2013) 2 SCC (L&S) 706] is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service.*

*xx xx xx*

*16. Applying the above parameters to the cases at hand, we are of the view that each one of the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any 9 disease and in sound physical and mental condition at the time of their entry into service thus remains unrebutted. Since the disability has in each case been assessed at more than 20%, their claim to disability pension could not have been repudiated by the appellants."*

7. A three Judge Bench of the Hon'ble Apex Court in ***Veer Pal Singh v. Secretary, Ministry of Defence*** rejected the opinion of invaliding Medical Board but directed the respondents to refer the case to Review Medical Board to reassess the medical condition of the appellant and to find out whether at the time of discharge from service, he was suffering from disease which made him unfit to continue in service. In the said case, the appellant was appointed in the year 1972 and was discharged in view of the opinion of the invaliding Medical Board dated November 14, 1977. The appellant has prayed for constitution of a fresh Medical Board to assess his disease and disability in a writ petition filed before the Allahabad High Court. The Hon'ble Apex Court held as under:

*"10. Although, the courts are extremely loath to interfere with the opinion of the experts, there is nothing like exclusion of judicial review of the decision taken on the basis of such opinion. What needs to be emphasised is that the opinion of the experts deserves respect and not worship and the courts and other judicial/quasi-judicial forums entrusted with the task of deciding the disputes relating to premature release/discharge from the army cannot, in each and every case, refuse to examine the record of the Medical Board for determining whether or not the conclusion reached by it is legally sustainable.*

*xx xx xx 6 (2013)*

16. F.C. Redlich and Daniel X. Freedman in their book titled *The Theory and Practice of Psychiatry* (1966 Edn.) observed:

*"Some schizophrenic reactions, which we call psychoses, may be relatively mild and transient; others may not interfere too seriously with many aspects of everyday living.... (p. 252)*

*Are the characteristic remissions and relapses expressions of endogenous processes, or are they responses to psychosocial variables, or both? Some patients recover, apparently completely,*

*when such recovery occurs without treatment we speak of spontaneous remission. The term need not imply an independent endogenous process; it is just as likely that the spontaneous remission is a response to non-deliberate but nonetheless favourable psychosocial stimuli other than specific therapeutic activity....” (p. 465) (emphasis supplied)*

18. *In Controller of Defence Accounts (Pension) v. S. Balachandran Nair [(2005) 13 SCC 128 : 2006 SCC (L&S) 734] on which reliance has been placed by the Tribunal, this Court referred to Regulations 173 and 423 of the Pension Regulations and held that the definite opinion formed by the Medical Board that the disease suffered by the respondent was constitutional and was not attributable to military service was binding and the High Court was not justified in directing payment of disability pension to the respondent. The same view was reiterated in Ministry of Defence v. A.V. Damodaran [(2009) 9 SCC 140: (2009) 2 SCC (L&S) 586] . However, in neither of those cases, this Court was called upon to consider a situation where the Medical Board had entirely relied upon an inchoate opinion expressed by the psychiatrist and no effort was made to consider the improvement made in the degree of illness after the treatment.*

19. *As a corollary to the above discussion, we hold that the impugned order as also the orders dated 14-7-2011 and 16-9-2011 passed by the Tribunal are legally unsustainable. In the result, the appeal is allowed. The orders passed by the Tribunal are set aside and the respondents are directed to refer the case to the Review Medical Board for reassessing the medical condition of the appellant and find out whether at the time of discharge from service he was suffering from a disease which made him unfit to continue in service and whether he would be entitled to disability pension.”*

8. In the aforesaid case, the Court referred the matter to the Review Medical Board in view of the fact that Psychiatrist has noted that the appellant has improved with treatment. The Court referred to

Merriam Webster Dictionary; Report of National Institute of Mental Health, USA; Modi's Medical Jurisprudence and Toxicology; and the book titled 'The Theory and Practice of Psychiatry' authored by F.C. Redlich and Daniel X. Freedman, to hold that the observations made by Psychiatrist was substantially incompatible with the existing literature on the subject.

9. However, in the present case, RAMB held for reassessing medical condition of the applicant for further grant of disability pension beyond two years has assessed the disability of the applicant as 'Nil' for life and we find that there is no such infirmity in the report which may warrant reconsideration of the physical condition and the extent of disability.

10. The Entitlement Rules itself provide that certain diseases ordinarily escape detection including Epilepsy and Mental Disorder, therefore, we are unable to agree that mere fact that Schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease was aggravated or attributable to military service.

11. Mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that "**NEUROSIS (MIXED TYPE)**" is presumed to be attributed

to or aggravated by military service. The Invaliding Medical Board has categorically held that the applicant is not fit for further service and there is no material on record to doubt the correctness of the Report of the invaliding Medical Board.

12. As far as First question for grant of service element for two years from 08.01.1993 to 07.01.1995 is concerned, the applicant has been granted disability element for the said period in terms of the Hon'ble Apex Court order dated 03.03.2017. Neither the nature of job nor the place of posting was such which could have caused stress and strain leading to disability as attributed to or aggravated by military service which entitle him for grant of service element. We find that it is not mechanical application of the principle that any disorder not mentioned at the time of enrolment is presumed to be attributed to or aggravated by military service. The question is as to whether the person was posted in harsh and adverse conditions which led to mental imbalance. The applicant filed contempt application before Hon'ble Apex Court for grant of service element which was rejected vide Hon'ble Apex Court order dated 24.09.2018. Accordingly, applicant is not entitled for grant of service element for two years.

13. As far as Second question for grant of the benefit of rounding off the disability pension is concerned, policy for rounding off of disability pension came into existence wef 01.01.1996 and claim of

the applicant for rounding off pertains to period from 08.01.1993 to 07.01.1995, hence he is not entitled for rounding off of disability pension.

14. As far as Third question for grant of disability pension beyond the period of 08.01.1995 is concerned, RAMB of the applicant was conducted at Command Hospital Lucknow on 23.09.2017 and assessed disability of the applicant beyond 08.01.1995 as "Nil", hence applicant is not entitled for grant of disability pension beyond 08.01.1995. We also find that rulings relied upon by the applicant being either based on different facts or overruled are of no help to him.

15. In the instant case the applicant was a young boy at the time of enrolment in Air Force and was boarded out within two years of his service. The applicant was under training in peace station while his disability was detected. Applicant approached this Tribunal for grant of disability pension which was rejected vide order dated 30.11.2010. Against the order of Tribunal, applicant approached Hon'ble Apex Court for grant of disability pension. As per order of Hon'ble Apex Court, PPO dated dated 27.03.2018 was issued and applicant was granted service element of disability pension for two years. Being not satisfied with the PPO applicant filed petition before the Hon'ble Apex Court for grant of service element which was dismissed. Then the applicant approached the respondents for grant of service

element for two years which was also rejected. RAMB assessed the disability of the applicant beyond two years as “Nil”, hence applicant is not entitled for grant of disability pension beyond two years.

16. In view of discussions made above, we hold that there is no illegality in denial of the claim for grant of service element for two years from 08.01.1993 to 07.01.1995 as well as denial of disability pension to the applicant beyond two years. Respondents have rightly rejected claim of the applicant which needs no interference. Resultantly, O.A. is **dismissed**.

17. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated: 09<sup>th</sup> May, 2023  
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