

**RESERVED****BENCH, LUCKNOW  
(CIRCUIT BENCH AT NAINITAL)****Original Application No. 75 of 2017**Thursday, this the 01<sup>st</sup> day of November 2018**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**Randheer Singh son of Shamsheer Singh, Resident of  
Village Kothara Santor, P.O. Nandalki Chauki, District-  
Dehradun.

..... Applicant

Ld. Counsel for the: **Shri M.C. Pant**, Advocate  
Applicant

Versus

1. Union of India through Defence Secretary,  
Government of India, New Delhi.
2. Officer Commanding, J&K Rifles, through Record  
Officer, Jammu Kashmir Rifles, Abhilekh Karyalaya,  
Jabalpur Cantt (M.P.).
3. Chief Defence Account (Pension), G3/II Section,  
Allahabad U.P., Allahabad.

..... Respondents

Ld. Counsel for the : **Dr. Chet Narain Singh**  
Respondents Central Govt Counsel assisted by  
**Lt Col Subodh Verma**,  
OIC Legal Cell.**ORDER**

**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

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

- “(a) To summon the original records pertaining to the petitioner’s case and issue an order quashing the impugned discharge order dated 31.10.1994/ 01.11.1994 (as contained to Annexure No A-1) in league with the appellate order dated 13.1.1998 and 21.2.1998 (as contained to Annexure No A-2 and A-3) along with its effect and operation also.*
- (b) Issue order or direction for declaring the applicant in service with all continuity along with all salary and other benefits had it been the impugned order was never in existence or allow the applicant for disability pension together with 18% interest along with arrears and also to direct the respondents to rehabilitate the applicant any equal post keeping in view of his disability on account of military service including all consequential benefits and medical facility. The applicant further prays and this Hon’ble Tribunal keeping the peculiar facts and circumstances of the case and to provide justice to the applicant may direct any other relief by moulding the relief to provide justice to the applicant.*
- (c) Issue order or direction to the respondents for awarding suitable damage/compensation in tune of Rs 20 Lakhs or such amount which the court may quantify and may deem fit and proper in the circumstances of the case.*
- (d) Issue any other order or direction as the Hon’ble Tribunal may deem fit and proper in the circumstances of the case.*
- (e) To award the cost of this petition to the applicant/petitioner.”*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 27.02.1990 and after rendering 04 years, 08 months and 02 days of service he was invalided out of service on 01.11.1994 in low medical category ‘EEE’ under

Rule 13 (3) III (iii) of Army Rules 1954. The Invaliding Medical Board (IMB) held at the time of discharge assessed the disabilities (i) **Generalized Seizures (345) @ 30%**, (ii) **Reactive Depressive Reaction (DSH) 300 @ 20%** and (iii) **GSW Abdomen (Optd) N-868, E-985 @ Nil** and composite disability element @ 30% for two years neither attributable to nor aggravated by military service but 'Reactive Depressive Reaction (DSH) 300' was regarded as aggravated by Generalized Seizures (345). Disability pension claim preferred by the applicant on 22.05.1995 was rejected vide order dated 10.01.1996. Later Appeal preferred on 24.02.1996 against rejection of disability pension claim was also rejected vide order dated 13.01.1998. Prior to filing of this O.A., the applicant had preferred Writ Petition No 34605 of 1998 (S/S) in the High Court of Judicature at Allahabad and after creation of State of Uttarakhand the Writ Petition was transferred to High Court of Uttarakhand and re-numbered as 711 of 2008 (S/S) and thereafter it was transferred to this Tribunal and re-numbered as T.A. No 4 of 2010. The said T.A. was dismissed as withdrawn vide order dated 27.04.2016. Hence this O.A.

3. Ld. Counsel for the applicant submitted that the applicant was found fit in all respects at the time of enrolment in the Army and there was no note in his primary service documents with regard to any disease. Therefore whatever the disease with which the applicant suffered during service is attributable to military service.

Ld. Counsel for the applicant drew our attention to Entitlement Rules for Casualty Pensionary Awards, 1982 which provides that a member is presumed to have been in sound physical and mental condition upon entering into service except as to physical disabilities noted or recorded at the time of entrance and in the event of his subsequently being discharged from service on medical grounds, any deterioration in his health which took place is entirely due to stress and strain of military service. The Ld. Counsel pleaded that disability pension be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant was enrolled on 27.02.1990 but he was admitted in Military Hospital, Jabalpur on 12.01.1991 due to Generalized Seizure. He was hospitalized on numerous occasions on account of the above disease and finally invalided out of service w.e.f. 01.11.1994 in medical category 'EEE'. The Invalid Medical Board (IMB) found him to be suffering from following three disabilities viz. "(i) **Generalized Seizures (345)**, (ii) **Reactive Depressive Reaction (DSH) 300** and (iii) **GSW Abdomen (Optd) N-868, E-985**". The IMB did not grant any disability percentage for the third disability, however it opined the first and second disability composite percentage to be 30% for two years. It also opined all

the three disabilities to be neither attributable to nor aggravated by military service (NANA). Accordingly, PCDA (P) Allahabad has rejected the disability pension claim of the applicant on grounds of the disability being NANA. He pleaded for the O.A. to be rejected.

5. Heard the Ld. Counsel for the parties and perused the material placed on record. We have also gone through the IMB held on record. The moot question before us therefore is simple and straight forward i.e. – is the disability of the applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors*** 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. On the point of Gun Shot Wound (GSW), we have given our anxious consideration and are of the opinion that the GSW is the result of a combination of Epilepsy attack and the generalized depressive reaction which the applicant was suffering from and this caused the applicant to try and shoot himself when he was on sentry duty in

depressive state. It is pertinent to mention that the applicant had requested not to put him on sentry duty owing to his ill health but even then he was made to do so. Additionally the Court of Inquiry (C of I) after the GSW episode has clear findings that the applicant was not feeling well and had requested almost all his superiors to exempt him from sentry duty. The above facts being relevant from the findings of the Court of Inquiry are as under:

"20. x x x x x

(a) to (b) x x x x

(c) *that No 13754414 Rfn Randhir Singh was a low medical category for epilepsy till Nov 93 when he was upgraded to AYE.*

(d) *that Rfn Randhir Singh suffered an epileptic attack on 18 Apr while he was at AP Rakhmuthi for gd duty.*

(e) *that he suffered a mild attack of epilepsy on 07 May 94 where he complained of headache, numbness in the right hand. He was under medical care from 1130h to 1600h on 07 May at Nathu Kulian. (Fact verified by Nk (NA) Ishwar Singh).*

(f) x x x x

(g) *that on the evening of 08 May between 1830h and 1915h, Rfn Randhir Singh had requested Hav Mohinder Singh, his sec cdr, Sub Tarlok Chand, his pl cdr, and the Adm NCO, Hav Bharat Singh not to detail him for sentry duty as he was not well. (This fact has been verified by Hav Mohinder Singh and Sub Tarlok Chand).*

(h) *that his request was not accepted by each of the NCOs and the JCO mentioned in para (g) above. (Facts verified by Hav Mohinder and Sub Tarlok Chand).*

(j) *that Hav Bharat had shouted at Rfn Randhir Singh and asked him to die as the coy*

would get his replacement who would be fit enough to give duty and his parents would get rupees two to two and a half lacs on his death. Besides his body would be thrown across the DCB where it would be claimed that the Pakistanis had shot him. (It is a statement of Rfn Randhir Singh which has not been verified by any one. However, the court is of the view that this statement is nearer the truth and has provided immediate motive to the individual who was over sensitive as he was young, unwell and his genuine pleas to be excused from sentry duty etc. were persistently falling on deaf ears).

(k) x x x x

(l) to (n) x x x x

(o) that Rfn Randhir Singh brooded over what Hav Bharat Singh had told him that evening and the fact that none of the NCOs or the Sr JCO had understood his problem; that his earlier requests to excuse him the sentry duties etc had met with retort.

(p) x x x xx

(underlined by me)

8. It is also clear that at the time of the GSW incident the applicant was also suffering from 'Generalized depression reaction' due to his repeated problems associated with seizure and epilepsy and the fear that he could lose his job. However, the fact that he was also suffering from "Generalized depressive reaction" became medically clear only 2-3 months after the GSW episode. It is abundantly clear from the opinion of the medical specialists that his first disease linked with seizures resulted in his suffering from the second disease i.e. Generalized depressive reaction and that his attempt at shooting himself was due to his depression about the whole situation he was finding himself into.

9. It is significant that his disease of seizures started on 14.10.1991 i.e. about 01 year and 08 months of his enrolment. The cause of disease as per medical specialist is Calcified Graniloma in Brain. Also on careful perusal of the IMB, we found that the Invaliding Medical Board on page 7 has recommended invalid pension to the applicant but even though the same has been denied by the pension sanctioning authority. Seizures are known to be caused by many factors including head injury and infections. Many times the cause of seizure remains unknown. Thus considering all issues we are of the considered opinion that the benefit of doubt should be given to the applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and the disability No 1 and 2 i.e. **Generalized Seizures (345)** and **Reactive Depressive Reaction (DSH) 300** of the applicant should be considered as aggravated by military service. We agree with the opinion of IMB i.e. disability No 3 viz. **GSW Abdomen (Optd) N-868, E-985** is NANA.

10. In view of the above the O.A. deserves to be allowed, hence **allowed**. The applicant is held entitled to 30% disability element for two years i.e. w.e.f. 01.11.1994. He shall also be entitled to the benefit of rounding off of his disability element from 30% to 50%

w.e.f. 01.01.1996. The respondents are directed to carry out Re-survey Medical Board (RSMB) for re-assessing the present medical condition of the applicant. Future entitlement of disability element shall be subject to the outcome of RSMB. The respondents are further directed to give effect to this order within a period of four months from the date of this order. Default will invite interest @ 9% per annum.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

Dated : November, 2018

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