

RESERVED
Court No.1

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

Original Application No 233 of 2016

Monday, this the 22nd day of October 2018

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

Ex-LAC (789282-R), Layak Singh S/O Sri Kashmir Singh,
Resident of village-Devpura, Post Office-Gariya,
Tehsil/Distt-Etah-207001.

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Air Staff, Vayu Bhawan, New Delhi-110011.
3. Directorate of Air Veterans, Air HQ, Subroto Park, New Delhi-110010.
4. AOC, Air Force Records, Subroto Park, New Delhi.

..... Respondents

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

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:-

- (i) *The Hon’ble Tribunal may be pleased to set aside order dated 21.11.2012 (Annexure No A-1), order dated 24.12.2012 (Annexure No A-2), order dated 28.05.2014 (Annexure No A-4) and order dated 09.03.2016 (Annexure No A-7).*
- (ii) *The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01.09.2015 along with its arrears and interest thereon at the rate of 18% per annum. Further disability pension be rounded off @ 50%.*
- (iii) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (iv) *Allow this application with costs.*

2. The factual matrix of the case are that the applicant was enrolled in the Indian Air Force on 30.12.2009 and invalided out of service after rendering about three years’ of service on 06.12.2012 in low medical category ‘**APGP**’ due to disease ‘**Bipolar Affective Disorder Current Episode Severe Depression with Psychotic Symptoms (F 31.5)**’ with disability @ 40% for life neither attributable to nor aggravated (NANA) by Air Force service. Disability pension claim was rejected by the competent authority vide order dated 21.11.2012. First and second appeals preferred by the applicant were rejected vide order dated 28.05.2012 and 09.03.2016 respectively. Hence this O.A.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Indian Air Force in physically and mentally fit condition. Due to onset of mental sickness in August 2012 the applicant was admitted in Command Hospital (Air Force), Bangalore on 16.08.2012 where he was provided treatment and later found to be suffering from '**Bipolar Affective Disorder Current Episode Severe Depression with Psychotic Symptoms (F 31.5)**' resulting in his invaliding out of service. Ld. Counsel further submitted that as per extant rules and regulations on the subject, the applicant is entitled to grant of disability pension as the disability took place while in service and it shall be presumed to be attributable to and aggravated by Air Force Service. The Ld. Counsel, while filing rejoinder affidavit, has relied upon Hon'ble Apex Court judgment in the case of **Dharamvir Singh vs Union of India & Ors**, (2013) 7 Supreme Court Cases 316 and **Sukhwinder Singh vs Union of India & Ors**, (2014) 4 SCT 163 (SC) and pleaded that the applicant is entitled to disability pension.

4. On the other hand, Ld. Counsel for the respondents argued that the IMB has declared the applicant's disability as NANA. Ld. Counsel further submitted that the competent authority had rejected claim of disability pension. The first and second appeals against rejection of disability pension have also been rejected by the competent authority. The ground of rejection of first and second appeals is primarily in agreement with the opinion of IMB declaring the disease as NANA on

grounds of the disease having no relation to service conditions.

5. Heard the Ld. Counsel for the parties and perused the material placed on record. We have also gone through the Invaliding Medical Board (IMB) and the rejection orders of first and second appeals. The question before us is simple and straight i.e. – is the disability of 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*** (supra). 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. In view of the settled position of law on attributability, we find that the IMB has denied attributability to the applicant only by endorsing a cryptic sentence in the IMB i.e. 'No relation to service condition'. We do not find this cryptic remark adequate to deny attributability to a soldier who was fully fit since his enrolment and the disease in question had started in August 2012 i.e. after about 2^{1/2} years of his service. It is worthwhile to mention that on admission in the hospital, Gp Capt PK Sharma, Classified Specialist (Psychiatry), observed that the trigger of onset of disease seems to be a consequence of dissolution of marriage to a girl whom he was engaged on 31.01.2012. Bipolar disorders are

known to be caused by many factors; however this disorder is primarily a result of interplay between Genetic, Neurochemical and environmental factors. Many times the exact cause of Bipolar disorder remains unknown. Thus, denial of attributability on the unsubstantiated ground that the disease has no relation with service conditions goes against fair play and principles of natural justice. We therefore are of the opinion that the cryptic remark of "No relation with service conditions" by the IMB to deny disability pension to the applicant is not adequate and justifiable. We are, therefore, 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 vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by Air Force service.

8. In view of the above the applicant is held entitled to 40% disability for life which shall stand rounded off to 50% disability for life in terms of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders dated 21.11.2012 (**Annexure No A-1 to the O.A.**), 24.12.2012 (**Annexure No A-2 to the O.A.**), 28.05.2014 (**Annexure No A-4 to the O.A.**) and 09.03.2016 (**Annexure No A-7 to the O.A.**) are set aside. The applicant shall be entitled to disability pension @ 40% for life to be rounded off to 50% for life w.e.f. three years prior to the date

of filing of the present application. The date of filing of present application is 10.06.2016. The respondents are 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. Default will invite interest @ 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : October, 2018
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