

**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
(CIRCUIT BENCH, NAINITAL)****ORIGINAL APPLICATION No. 300 of 2018**Thursday, this the 20<sup>th</sup> day of September, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)  
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Ex Rifleman (4057136F) Ramesh Chandra Singh S/O Shri Shyam Singh R/O Village-Jhapal Gaon, PO-Jaggi Kandai, Distt-Rudraprayag (Uttarakhand).

..... Applicant

Ld. Counsel for the: **Shri CS Rawat**, Advocate  
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Ministry of Defence, Appellate Committee (Pension) DMACP, Govt of India, New Delhi-110011.
3. The Principal CDA (Pension) Allahabad, G3/VII Section, Allahabad, UP.
4. The Record Officer, Garhwal Rifles, Landsdowne, Uttarakhand.

.....Respondents

Ld. Counsel for the: **Shri Anurag Mishra**, Advocate  
Respondents. Counsel for the respondents, assisted by  
**Maj Salen Xaxa**, OIC Legal Cell.**ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The present Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has prayed:-

(i) Humbly petitioner/applicant seeks prayer to summon the entire records and after calling to quash the impugned orders pertaining to rejection of disability pension of the petitioner/applicant passed by the P.C.D.A.P. and Army Headquarters.

(ii) To grant/sanction the disability pension from 19.12.1981 with arrears on the date the petitioner/applicant discharged from Army/Garhwal Rifles till life.

(iii) Such other suitable order be deemed fit and proper in the facts and circumstances of the case also kindly be pleased to meet in the interest of justice.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army (Garhwal Rifles) on 30.09.1976 and on completion of five years 119 days service was discharged on 19.12.1981 in terms of Rule 13 (3) item III (iii) of Army Rules, 1954 before completion of terms of engagement in low medical category. The applicant was diagnosed for disease '**Schizophrenia**' by the Invaliding Medical Board (IMB). The IMB assessed the degree of applicant's disability @ 40% for two years and further opined that the disease was neither attributable nor aggravated by military service (NANA). The claim for grant of disability pension was forwarded to CDA (P) Allahabad which after examining his case rejected the claim for disability pension vide order dated 14.04.1982 on the ground that the disability was neither attributable to nor aggravated by military service. The appeal preferred by the applicant against rejection of his claim for grant of disability pension was rejected vide order dated 28.06.1983. The second appeal of the applicant was also rejected vide order dated 21.06.1985.

3. Ld. Counsel for the applicant vehemently prayed for grant of disability pension on the ground that the applicant had joined his service in a medically fit state and was invalided out in a low medical category. Hence his disability should be considered as attributable to military service.

4. Ld. Counsel for the respondents submitted that the applicant was invalided out of service after rendering about five years and 119 days of service due to his disability "**Schizophrenia**". The IMB assessed his disability @ 40% for two years opining that the disease is neither attributable to nor aggravated by military service. It has also been pleaded that the PCDA (P) Allahabad rejected the claim for grant of disability pension after considering the relevant Rules and Regulations. Accordingly the Ld. Counsel concluded by stating that the applicant is not entitled to disability pension as his disability is neither attributable to nor aggravated by military service.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also perused the relevant material placed on record. The only ground put forth by the respondents for denial of disability pension is that the IMB has opined that the disease is neither attributable to nor 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. The above judgment has been followed by the Supreme Court in **Union of India and others v. Rajbir Singh** (CA No. 2904 of 2011 decided on 13.2.2015); **Union of India and others v. Manjit Singh** (CA No. 4357-58 of 2015 (arising out of SLP ( C) No. 13732-33 of 2015) decided on 12.5.2015; **Union of India v. Angad Singh** (CA No. 2208 of 2011 decided on 24.2.2015); **KJS Butter v. Union of India** (CA No. 5591 of 2006 decided on 31.3.2011; **Ex. Hav Mani Ram Bharia v. Union of India and others**, Civil Appeal No. 4409 of 2011 decided on 11.2.2016; **Satwinder Singh v. Union of India** (O.A. 621 of 2014), **Bharat Kumar Vs UOI & Ors.**(O.A. 1235 of 2014), **Sukhwinder Singh vs Union of India & Ors** (2014, STPL (WEB) 468 SC and also in a very

recent judgment of Hon'ble Apex Court in the case of **Ex 6 GNR Laxman Ram Poonia vs. Union of India** (2017) 4 SCC 697.

8. When we look at the applicant's case of disability in light of the above order, we find that the reasons given by IMB for the disability being NANA is very cryptic and lacks logic and rationality. i.e. "this is Constitutional Disorder not connected with service". In the totality of circumstances, we do not consider it as an adequate ground to deny attributability of the disease to the applicant. Hence since the disease has started after 4<sup>1/2</sup> years of service, we give benefit of doubt to the applicant and consider this disease as aggravated by the stress of military service.

9. In view of the above, we **allow** the present O.A., set aside the impugned orders and direct the respondents to grant disability pension to the applicant @ 40% from 19.12.1981 for two years and direct the respondents to conduct a Re-survey Medical Board (RSMB) within four months from the date of this order. Further eligibility to disability pension shall be subject to outcome of RSMB. In case this order is not complied with within the stipulated period, the amount so accrued shall carry interest @ 9% per annum from the due date, till actual payment thereof.

13. O.A. is **allowed** accordingly.

No order as to costs.

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

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

Dated : September, 2018  
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