

**RESERVED**  
**Court No. 1**

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

**ORIGINAL APPLICATION No. 45 of 2018**

Wednesday, this the 24<sup>th</sup> day of October 2018

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

No 10822234 Ex Swr Angrej Singh, S/O Sri Srain Singh, R/O Village-Almawala, Post-sherpur Khadan, Distt-Muzaffarnagar (UP).

..... Applicant

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

Versus

1. Union of India, through, the secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, PO: New Delhi.
3. The Officer-In-Charge, Armoured Corps Records, Ahmednagar-414002.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).
5. Release Medical Board, Through President Medical Board, Base Hospital, Delhi Cantt-10.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**,  
Respondents. Central Govt. Standing Counsel

## **ORDER**

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

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

*(a) The Hon’ble Tribunal may be pleased to set aside the findings of Release Medical Board holding as neither disease attributable to nor aggravated by military service and assessing the percentage of disability pension for disability pension as NIL (Annexure No A-1).*

*(b) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 18.07.2017 (date of conducting of Release Medical Board) alongwith its arrears with interest at the rate of 18 percent per annum.*

*(c) 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. The facts in nutshell are that the applicant was enrolled in the Indian Army on 05.06.1984 and was discharged from service on 31.05.1992 after rendering 07 years, 08 months and 27 days of service in terms of Rule 13 (3) III (iv) of Army Rules 1954. At the time, the applicant was discharged from service, he was in low medical category for the disability termed as ‘Generalized Seizure’. Earlier in 1986 while participating in the Cross Country, the applicant suffered injury and was admitted in MH, Jalandhar cantt on 17.05.1986 for Osteocandritus in the 8<sup>th</sup> Rib and discharged from the hospital on 20.06.1986 with one month’s sick leave. The disease ‘Generalized Seizure’ took place while the applicant reported for duty after expiry of sick

leave and underwent for re-categorization of medical category in the hospital. After re-categorization the applicant was placed in category BEE (Permt). Being depressed, the applicant submitted an application to discharge him from service without carrying out RMB and without pension and other benefits which was accepted and he was discharged from service on 31.05.1992. In the year 2015 the applicant filed O.A. No. 227 for grant of disability pension and setting aside of impugned order dated 17.10.2014 vide which disability claim was rejected. On 06.10.2016 the O.A. was allowed partly with direction to set aside the impugned order and carry out the RMB. Accordingly belated RMB was carried out on 18.07.2017 with due sanction from the competent authority. During RMB, Col FMB Ahmad, Senior Advisor (Med) & Neurologist while endorsing summary of case had opined that the disease 'Generalized Seizure' occurred after the applicant was admitted for fracture sustained during cross country. The disability of the applicant was assessed @ 20% for life neither attributable to nor aggravated (NANA) by military service, hence this O.A.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore any disability suffered by the applicant after joining

the service should be attributable to military service and the applicant is entitled to grant of disability pension. In this connection, Ld. Counsel for the applicant has relied upon verdict of Hon'ble Apex Court in the case of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) AIR SCW 4236.

4. On the other hand, Ld. Counsel for the respondents submitted that under the provisions of AO 3/89, it is compulsory for every low medical category personnel to undergo the Release Medical Board (RMB) before retirement/discharge from service. Before discharge the RMB proceedings were prepared and signed by the applicant on 23.05.1992 but the applicant refused to undergo RMB, instead he submitted an application dated 29.05.1992 and stated therein that he was willing to proceed on discharge without carrying out RMB and no disability pension is required by him. The applicant had also submitted 'No Claim Certificate' dated 30.01.1992 vide which he intended to proceed on discharge without claiming any service/disability pension. The Ld. Counsel further submitted that the applicant had also filed O.A. No. 09 of 2013 in this Tribunal but later it was withdrawn with liberty to file afresh. He also submitted that the belated RMB conducted on the applicant had regarded seizure disorder as NANA by military service, therefore the applicant was not granted any disability pension. He further averred that claim of the applicant for grant of disability pension was rightly rejected

by the competent authority as he was found ineligible for grant of the same in accordance with extant rules.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB. 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 settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh vs. Union of India & 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 RMB has denied attributability to the applicant only by endorsing that 'onset of ID in Nov 1986 while serving in peace area (Jalandhar). There is no close time association with Fd/HAA/CI Ops tenure. No aggravating factors related to mil service were noted in this ibid case. Hence ID conceded as neither attributable to nor aggravated by military service as per para 33, Chapter VI, GMO's (Mil Pension), 2008 amendment.

8. Further, it may be pertinent to mention that during RMB, Col FMH Ahmad, Senior Advisor (Med) & Neurologist had mentioned in Clinical Assessment as under:-

*"Young soldier had presented with a generalised seizure in 1986 after adm for a fracture sustained during cross country."*

9. The above endorsement establishes that 'Generalized Seizure' has started only after the applicant was admitted in the hospital for rib fracture sustained during a cross country run. The primary reason given in medical board for denying attributability was that the disease has originated while in peace and not in Fd/HAA/CI Ops tenure. We find that after rib fracture, during cross country the applicant was admitted in military hospital and only after this admission he has started having bouts of seizures. It is also known in medical terms that amongst the many possible causes of seizures, head injury and brain infection are also the causes which can trigger seizures.

10. Thus considering all issues, we feel that denial of attributability to military service only on the ground that the disease started in peace area and not in Fd/HAA/CI Ops tenure amounts to being unfair to the applicant. Therefore we are of the considered opinion that the benefit of doubt should be given to the applicant in view of the disease starting after rib fracture and admission in MH. Thus we consider applicant's disease of generalized seizure as attributable to military service.

11. In view of the above, we are of the view that the applicant is held entitled to 20% disability for life which shall stand rounded off to 50% disability for life in terms of ***Union of India vs Ram Avtar & Ors***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014).

12. As a result of foregoing discussion, the O.A. is **allowed**. The applicant shall be entitled to disability pension @ 20% for life to be rounded off to 50% for life w.e.f. 18.07.2017 as clarified vide order dated 06.10.2016. 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 S.V.S. Rathore)**  
**Member (J)**

Dated: October, 2018  
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