

**Court No. 1**  
**Reserved Judgment**

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

**Original Application No. 706 of 2017**

**Friday, this the 26<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)**

Kishore Kumar, No 14313807W, Ex Gnr,  
Son of Shri Rambali Singh, R/O – Vill &  
PO- Daulatpur, Tehsil – Karhal,  
District – Mainpuri (U.P.)

..... **Applicant**

Ld. Counsel for the – **Shri VK Pandey, Advocate**  
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi.
2. Dy Comdt Artillery, HQ Artillery Centre, PIN – 908800, C/O 56 APO
3. OIC Records, Artillery Records, Nasik.
4. Principal Controller Defence Accounts, (Pension), Draupadi Ghat, Allahabad (U.P.).

..... **Respondents**

Ld. Counsel for the – **Shri Shyam Singh,**  
Respondents **Central Govt. Counsel.**

**ORDER**

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

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs:-

*(i) That this Hon’ble Tribunal may kindly be pleased to quash the impugned rejection order dated 22.12.1980, passed by the opposite party no. 4, as contained in annexure no. 1 to this original application.*

*(ii) That this Hon’ble Tribunal may kindly be pleased to direct the opposite parties to pay the disability pension to the applicant from the date of discharge i.e. 20.09.1980 to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment.*

*(iii) That this Hon’ble Tribunal may kindly be pleased to award the cost Rs. 20,00,000/- (Rs. Twenty Lacs) in the favour of applicant for mental and physical harassment and agony with the interest @ 18% p.a. in the interest of justice.*

*(iv) That this Hon’ble Tribunal may be pleased to pass any other order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.*

2. The undisputed factual matrix on record is that the applicant was enrolled in the Army on 17.10.1973 and was invalided out from service on 21.09.1980 under Rule 13 (3) III (iii) of Army Rules 1954. The Invaliding Medical Board (IMB) found the applicant suffering from the disease ‘**NEUROSIS (ICD 300)**’ and assessed the disability as 30% for two years.

The IMB opined that the disability was neither attributable to nor aggravated by Military Service and that the disability was constitutional in nature.

3. Learned counsel for the applicant has pleaded that the disease of the applicant was first started in the year 1980, i.e. seven years after enrolment; hence it is attributable to Military Service. He has questioned the finding of IMB that the disease is constitutional in nature and that he has vehemently pleaded that the disease is attributable to Military Service hence the applicant is entitled to disability pension.

4. Learned counsel for the respondents submitted that the IMB has opined the applicant to be suffering from the disease of '**NEUROSIS (ICD 300)**'. The disability has been considered as neither attributable to nor aggravated by Military Service being constitutional. The disability has been adjudged @ 30% for two years by IMB. As such, in terms of Para 173 of Pension Regulations and the opinion of IMB, his claim has correctly been rejected.

4. We have heard Shri V.K. Pandey, Ld. Counsel for the applicant and Shyam Singh, Ld. Counsel for the respondents and perused the record. The only question before us is as to whether the disability of the applicant is attributable to or aggravated by Military Service.

5. We are of the view that the case is squarely covered by the judgment of ***Dharamvir Singh vs. Union of India and others***, reported in (2013)7 SCC 316, ***Sukhvinder Singh vs. Union of India***, reported in (2014) 14 SCC 364.

6. The medical board has assessed the disability as neither attributable to nor aggravated by Military Service on the grounds of the disease being constitutional in nature. We find that this short and crisp statement of IMB that disease is constitutional in nature and is not connected to service, does not justify denial of attributability in a meaningful and rational manner.

7. The fact that the disease '**NEUROSIS (ICD 300)**' has started after seven years of Military service is significant. If the applicant was fit for seven years and thereafter a disease has started after seven years due to apparent triggers in personal life therefore the same cannot be justified as reasons for denial of attributability on grounds of its being constitutional in nature. Considering this crisp one line explanation for denying attributability in Medical Board, we are of the considered opinion that benefit of doubt goes in favour of the applicant and hence we declare this disease as aggravated by military service.

8. In view of the above the Original Application succeeds and deserves to be allowed.

9. Accordingly O.A. No 706 of 2017 is **allowed**. The impugned order passed by the respondents rejecting the disability pension is quashed. The respondents are directed to grant disability pension to the applicant @ 30% for two years after discharge. The respondents are also directed to refer the applicant's case for Re-survey Medical Board. Further entitlement of disability pension will be subject to the outcome of RMSB. The respondents are further 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to costs.

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

Dated : October 2018  
ukt/-

**(Justice S.V.S. Rathore)**  
**Member (J)**