

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****RESERVED****COURT NO. 2****O.A. No. 183 of 2016****Tuesday, this the 29<sup>th</sup> day of August, 2017****“Hon’ble Mr. Justice S.V.S. Rathore, Judicial Member  
Hon’ble Air Marshal Anil Chopra, Administrative Member”****Smt. Bhagwan Devi, W/O Late Sepoy (POTA) Jagvir Singh, R/O  
Vill Nagla Kulhu (Yamuna Par) PO Mathra Distt Mathura.****-----Applicant****Ld. Counsel appeared  
for the Applicant****- Shri K.K. Mishra, Advocate****Versus**

1. Union of India, through its Secretary, Min of Defence, New Delhi.
2. Chief of Army Staff, Army Head Quarters, New Delhi.
3. Officer-in-Charge, Records, Army Medical Corps, (AMC) Lucknow.
4. PCDA (Pension), Allahabad.

**.....Respondents****Ld. Counsel appeared  
for the Respondents****-Shri Ashish Kumar Singh,  
Advocate.****OIC Legal Cell****- Maj Salen Xaxa.**

**ORDER**

**“Per Hon’ble Air Marshal Anil Chopra, Member (A)”**

1. Present O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 has been preferred for payment of disability pension which has been denied by the respondents.

2. We have heard Shri K.K. Mishra, learned counsel for the Applicant and Shri Ashish Kumar Singh, learned counsel for the respondents, assisted by Maj Salen Xaxa, OIC Legal Cell and perused the record.

3. The applicants’ husband was enrolled in the Indian Army, Army Medical Corps on 01.05.1965 in medical category ‘AYE’ i.e. S1H1A1P1E1. He was invalided out of service on 19.10.1973 on account of “SCHIZOID PERSONALITY WITH PARANOID TRAITS” having rendered 08 years, 05 months and 18 days of service. During 1969 applicants’ husband suffered from Pyogenic Meningitis and was admitted in Base Hospital Barrackpore. On 02.02.1971 he was placed in Med Cat BEE by a medical board. Copy of the medical board proceedings is annexed as **Annexure A-1** to the O.A. In the year 1973 while posted with Military Hospital Silchar, he was examined by a Medical Officer and was found to be suffering from anxiety neurosis 300 (v) “**SCHIZOID PERSONALITY WITH PARANOID Transit (297)**” and was transferred to Base Hospital Barrackpore for evaluation and treatment. In Sep/Oct 1973 Invaliding Medical Board was carried out (**Annexure A-2** to the O.A.) and he was placed in Medical Category-EEE and his disability

was assessed @ 40%, neither attributable to nor aggravated by military service and ultimately he was discharged on 19.10.1973. Applicant's husband wrote two letters to AMC Records for grant of disability pension (**Annexure A-3 & A-4** to the O.A.) which was given no effect. In Part III of the Invaliding Medical Board column 1 reads as under:-

**"1. Did the disability exist before entering service? No"**

This articulates that the disability occurred due to military service.

4. The deceased soldier's mental condition was too shoddy that he was unable to lead a normal life. On 02.01.2003 he died due to his poor mental condition. The applicant is a poor illiterate lady and after the death of her husband, she made several correspondences with AMC Records but to no avail (**Annexure A-5** to the O.A.).

5. The respondents in para 5 of the counter affidavit have also admitted granting 40% disability but neither attributable to nor aggravated by military service.

6. Ld. Counsel for the applicant submitted that the applicant is entitled for disability pension in terms of Rule 173 of the Pension Regulations, 1961 (Part-I) which stipulates as under:-

*"Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over."*

7. The question of grant of disability pension is no longer res integra. The Hon'ble Supreme Court in the case of **Dharmvir Singh**

**vs. Union of India & others**, reported in 2013 AIR SCW 4236, has held that in case at entry level, disability is not found in relation to any individual and later on during course of service, he suffers from any disease or disability, it shall amount to have occurred during the course of service on account of army service and it necessarily has to be treated as attributable to and aggravated by military service and the disability pension has to be granted to such an individual. Relevant portion of the judgment contained in Para 28 is reproduced as under:

*“28. A conjoint reading of various provisions, reproduced above, makes it clear that: (i) 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 above, the question whether a disability is attributable or aggravated by military service to be determined under “Entitlement Rules for Casualty Pensionary Awards, 1982” of Appendix-II (Regulation 173). (ii) A member is to be presumed in sound physical and mental condition upon entering 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 r/w Rule 14(b)]. (iii) 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). (iv) 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 4 conditions were due to the circumstances of duty in military service. [Rule 14(c)]. (v) 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. [14(b)]. (vi) 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. [14(b)]; and (vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7, 8 and 9 as referred to above."*

8. Aforesaid proposition of law, as reproduced herein above, has again been followed by the Hon'ble Supreme Court in the case of **Sukhvinder Singh vs. Union of India & Ors.**, reported in (2014) STPL (WEB) 468 SC:

*"In view of above, admittedly the applicant, who has suffered disability during the course of army service, is entitled for grant of disability pension. The application is deserves to be allowed."*

9. The Ld. Counsel for the applicant made an oral prayer for rounding off benefit of his disability element of pension. In **Union of India and Ors vs. Ram Avtar & Ors** (Civil Appeal No. 418 of 2012 dated 10<sup>th</sup> December 2014) the Hon'ble Apex Court nodded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have been invalided out of service on account of being in low medical category. In view of the ratio of the judgment the applicant is also entitled to the benefit of rounding off his disability element of pension, which has been assessed by the Invaliding Medical Board at 40% to 50%.

10. In view of above, order dated 04.11.2013 denying disability pension to the applicant and order dated 07.10.2013 passed by the PCDA (P) Allahabad are set aside. The respondents are directed to grant disability pension to the applicant @ 40% which is rounded off

to 50% with effect from December 2012 i.e. three years preceding to filing of the O.A. expeditiously, say, within four months from the date of presentation of a certified copy of this order. It is clarified that in case the amount is not released in favour of the applicant within the stipulated period, the applicant shall be entitled for payment of interest at the rate of 10% per annum on the amount accrued.

11. The O.A. is **allowed** accordingly.

No order as to costs.

**(Air Marshal Anil Chopra)**  
**Member (A)**

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

**Dated : August, ,2017**

BLY/-