

**RESERVED**  
**COURT NO 1**

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

**ORIGINAL APPLICATION No 458 2019**

Monday, this the 30<sup>th</sup> day of September, 2019

**“Hon’ble Mr. Justice Virender Singh, Chairperson  
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 15373392M Ex Nk Ram Bhajan son of Sri Ram Charan,  
R/O Vill-Chandpur (Near Primary School), PO-Majeni  
(Fatehgarh) District-Farrukhabad (U.P.)-246725.

...Applicant

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

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of Army Staff, Integrated Head Quarter of Ministry of Defence, Sena Bhawan, New Delhi-11.
3. CO 11 IDSR, C/O 56 APO.
4. OIC Records, Signals PIN-908770, C/O 56 APO.
5. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad.

.... Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**  
Respondents Central Government Counsel

**ORDER****Per Hon'ble Air Marshal BBP Sinha, Member (A)**

1. The applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:-

- (a) *An order or direction directing the respondents to pay the applicants the disability pension w.e.f. the date of invalidation i.e. 23.06.2008.*
- (b) *An order or direction allowing the applicant with cost.*
- (c) *Any other or further order or direction which this Hon'ble Court may deem just, fit and proper in the circumstances of the case in the interest of the justice.*

2. At the very outset, it may be pointed out that the applicant has approached this Tribunal with delay of 09 years, 04 months and 21 days. By order dated 12.09.2019, after hearing Ld. Counsel for both the parties at length, the delay has been condoned. It is pertinent to mention that the respondents have not filed any counter affidavit but they have produced the relevant medical documents. Hence with the consent of both the parties we proceed to decide the matter.

3. Brief facts as would appear from the pleadings on record are that the applicant was enrolled in the Indian Army on 27.12.1990 in Med Category SHAPE-1 and was invalided out on 23.06.2008. In September 1993 he suffered from 'Schizophrenia' and was given treatment till 1999 and thereafter upgraded to SHAPE-I. He suffered a relapse in the year 2008. While on leave in March 2008, his wife noticed his abnormal

behavior wherein he was unable to sleep and was restless. He claimed his desire to make brother Rashtrapati and his nephew as Prime Minister. He felt that his neighbourhood was going to turn into 'Baikunthadham'. He was admitted in MH, Fatehgarh on 20.03.2008. From MH, Fatehgarh he was referred to Command Hospital, Lucknow. On 26.05.2008 his Invaliding Medical Board (IMB) was held at Command Hospital (Central Command) Lucknow which opined his disability 'Schizophrenia (old) @ 20% for five years as neither attributable to nor aggravated by military service (NANA). Consequent to recommendation of the IMB the applicant was invalided out of service w.e.f. 23.06.2008 in medical category S5H1A1P1E1. The applicant had put in more than 19 years of service at the time of invalidation from service. His disability pension claim was rejected vide order 11.11.2009. It is in this perspective that this O.A. has been filed.

4. Ld. Counsel for the applicant claimed that the applicant was fully fit at the time of enrolment and has been invalided out after 19 years of service. Hence his disability should be considered as attributable to military service and he shall be granted disability pension.

5. Per contra, Ld. Counsel for the respondents pleaded that though no counter affidavit has been filed the Invaliding Medical Board (IMB) proceedings clearly indicate that the disability of the applicant has been opined as NANA and not connected with

military service by the IMB. Hence he pleaded for the O.A. to be dismissed.

6. For adjudication of the controversy involved in the instant case, we need to address only one issue i.e. is the disability of the applicant attributable to military service or not?

7. So far as attributability or aggravation factor of disability is concerned, the law on this point is no more RES INTEGRA. On the question of attributability/aggravation of disability to military service, we would like to refer to the judgment and order of Hon'ble the Apex Court in the case of **Dharamvir Singh vs Union of India & Ors** reported in (2013) 7 SCC 316. The relevant portion of the aforesaid judgment, for convenience sake, is reproduced as under:-

*“18. A disability is 'attributable to or aggravated by military service' to be determined under the ‘Entitlement Rules for Casualty Pensionary Awards, 1982’, as shown in Appendix-II. Rule 5 relates to approach to the Entitlement Rules for Casualty Pensionary Awards, 1982 based on presumption as shown hereunder:*

*“Rule5 . The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:*

**PRIOR TO AND DURING SERVICE**

*a) member is presumed to have been in sound physical and mental condition upon entering except as to physical disabilities noted or recorded at the time of entrance.*

*b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.” From Rule 5 we find that a general presumption is to be drawn that a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. If a person is discharged from service on medical ground for deterioration in his health it is to*

*be presumed that the deterioration in the health has taken place due to service.*

*“28. A conjoint reading of various provisions, reproduced above, makes it clear that:*

*(i) Disability pension to be granted to an individual who is invalidated 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 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 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 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 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. From the above mentioned Rule on disability pension and ratio of law emerging out of Hon'ble Apex Court's judgment

(supra), it is clear that once a person has been recruited in a fit medical category, the benefit of doubt will lean in applicant's favour unless very good reasons are given by the Medical Board as to why the disease could not be detected at the time of enrolment. In this particular case, we find that the applicant's disability 'Schizophrenia' first started in 1993 i.e. within three years of his enrolment. However he got cured and was upgraded to SHAPE-I. Thereafter he has worked with the respondents for about sixteen years before the relapse and invalidation out from service. Additionally no meaningful reason as to why the disease is not attributable has been given. The reason given by the IMB 'Not connected with service' is very brief and inconclusive. Thus in these circumstances we are of the opinion that the benefit of doubt will lean towards the applicant and his disability is to be considered as 'aggravated' by military service.

9. In view of the law settled by Hon'ble The Apex Court, the applicant is entitled to the benefit of rounding off. Thus, his disability @ 20 % for five years will stand rounded off to 50% for five years from the date of his discharge in terms of the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar***.

10. In view of the above, the O.A. is **partly allowed**. The disability of the applicant is to be considered as aggravated by military service and the benefit of rounding off to 50% is

extended from the date of his discharge. As far as payment of arrears of disability element is concerned, Hon'ble The Apex Court in the case of ***Shiv Dass vs Union of India & Ors*** reported in 2007 (3) SLR 445 has held that due to law of limitations, arrears of disability pension are to be restricted to three years prior to filing of the O.A. if the same is filed belatedly and delay has been condoned. Since the applicant has approached this Tribunal after a gap of more than 09 years he is not entitled to any arrears of disability element for the period of five years after discharge. The respondents are directed to hold applicant's Re-survey Medical Board (RSMB) afresh for re-assessing his present medical condition within a period of three months from the date of receipt of a certified copy of this order. Further entitlement of applicant's disability element of pension shall be subject to the outcome of the RSMB.

No order as to cost.

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

Dated : September 2019

*gsr*

**(Justice Virender Singh)**  
**Chairperson**