

RESERVED
COURT NO 1

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

ORIGINAL APPLICATION No. 457 OF 2019

Monday, this the 30th day of September, 2019

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

No. 4173298 Ex Naik Hira Singh son of Late Shri Bhagwan Singh, resident of Village-Basikhet, P.O. Devrari Pant, District-Pithoragarh (UK), PIN-262532.

.....Applicant

Ld. Counsel for: **Col (Retd) H.M. Maheshwari,**
the Applicant Advocate

Versus

1. Union of India through the Secretary, Ministry of New Delhi-110001.
2. The Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence, South Block, New Delhi-110001.
3. Adjutant General, Integrated Headquarters of the Ministry of Defence, South Block, New Delhi-110001.
4. Officer-In-Charge, Records The Kumaon Regiment, PIN-900473, C/O 56 APO.
5. Principal Controller Defence Accounts Pensions, Draupadi Ghat, Allahabad, PIN-211014.

.....Respondents

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

ORDER

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

1. Being aggrieved by denial of disability pension, the applicant has filed the present Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 wherein he has sought the following reliefs:-

- (a) *Issue/pass an order quashing the order dated 04.01.2000 of denial of disability pension to the applicant in spite of recommendations of Invalidating Medical Board (Annexure A-1).*
- (b) *Issue/pass an order or a direction to quash PCDA (P) Allahabad letter No G3/99/3495/II dated 28 Dec 1999 based on which Annexure-1 has been issued. (Not provided to the applicant).*
- (c) *Issue/pass an order or a direction to quash GOI MoD letter No-1(1237)/2000.D (Pen. A&AC) dated 20 Jun 2001, rejecting First Appeal.*
- (d) *Issue/pass an order or a direction to quash GOC MoD letter No-F.6(70)/2003/D (Pen A&AC) dated 08 Jun 2005, rejecting Second Appeal.*
- (e) *Issue/pass an order to respondents to grant disability element, to the applicant, 100% with effect from the date of Invalidment that is (01.03.1995).*
- (f) *Issue/pass any other order or direction as this Honourable Tribunal may deem fit in the circumstances of the case.*
- (g) *Allow this application with exemplary cost.*

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 13 years, 03 months and 29 days. Since payment of disability pension involves recurring cause of action, the delay was condoned vide order dated 12.09.2019.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 07.08.1979 and was invalided out of service w.e.f. 01.03.1999 (AN) in low medical category 'EEE' due to 'Fracture D-12 and Vertebrate with Paraplegia (Optd)' having rendered more than 19 years of service. The IMB of the applicant was held on 13.02.1999 at Military Hospital, Ranikhet. The Invaliding Medical Board (IMB) Proceedings has assessed his disability @ 100% for life attributable to military service. Disability pension claim was rejected by PCDA (P) Allahabad on the ground of NANA and disability being constitutional in nature vide order dated 28.12.1999 and communicated to the applicant vide letter dated 04.01.2000. Thereafter first and second appeals preferred by the applicant against rejection of disability pension claim were rejected vide order dated 20.06.2001 and 08.06.2005 respectively. It is in this perspective that the present O.A. has been filed.

4. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time of entry. In the event

of his subsequently being invalided out from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. He further pleaded that the applicant's disability has been opined to be attributable to military service as endorsed on page 3 of the IMB proceedings but the pension sanctioning authority has overruled the opinion of IMB proceedings and rejected the disability pension claim. He further stressed that since the medical authority has assessed applicant's disability element @ 100% for life attributable to military service, therefore the applicant is very much entitled to disability pension. The Ld. Counsel for the applicant pleaded for disability pension to be granted to the applicant.

5. On the other hand, Ld. Counsel for the respondents has not filed counter affidavit but has submitted certified copies of all medical records. He orally submitted that since the pension sanctioning authority and appellate authorities have rejected disability pension claim, the applicant is not entitled to disability pension. He pleaded the O.A. to be dismissed.

6. Though counter affidavit has not been filed, however since all relevant medical documents and other relevant

documents are available, with the consent of both the parties, we proceed to decide the case.

7. We have heard Ld. Counsel for the parties and perused the material placed on record.

8. On careful perusal of the medical documents, it has been observed that the applicant fell down from a hill top while on leave and experienced severe backache and problem in passing urine. He was admitted in Military Hospital (MH), Ranikhet. At MH Ranikhet a spine surgery was performed on the applicant on D-12 and L-3 sections of spine. It is a well fact known that spine surgery is full of risk and there is no guarantee of recovery in such an operation. In this case it appears that after spine surgery the applicant has become "PARAPLEGIC" i.e. in vegetative state and can only move in a wheel chair. Now what happened during the spine operations is only known to the doctors, however the opinion of the IMB is very clear that the medical condition of the applicant is 'Attributable' to military service. The doctors being specialists on matters of spine operations must be having very good reasons to give such an opinion because the applicant after operation has gone into a vegetative state. Hence

overruling of the IMB medical opinion in such circumstances by PCDA (P), on the ground that injury was during leave is only half the truth and ignores the activities which are associated with a serious spine operation.

9. In any case the issue of primacy of the opinion of a Medical Board is no more RES INTEGRA. The same has been upheld by the decision of Hon'ble Apex Court in the case of **Ex. Sapper Mohinder Singh** in Civil Appeal No 104 of 1993 decided on 14.01.1993.

10. Hence we set aside the decision of the PCDA (P) on this matter and uphold the opinion of the Invaliding Medical Board and declare the disability of the applicant as 'Attributable' to military service @ 100% for life.

11. The IMB has held the disability of the applicant to be 100% for five years. Since the applicant is 100% disabled and is in a vegetative state and cannot move around without a wheel chair and the fact that within one year of his discharge all future medical boards are being carried out for life, as a matter of policy. Therefore, in the interest of substantial justice the disability of the applicant @ 100% for five years as recommended by the IMB is extended @100% for life. **alongwith attendant**

allowance as applicable in accordance with the rules.

12. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The applicant's disability is to be considered as attributable to military service. He is held entitled to disability pension @ 100% for life w.e.f. his date of discharge. The applicant is already in receipt of service element for life, however, due to law of limitations as settled by the Hon'ble Supreme Court in the case of ***Shiv Dass vs Union of India & Ors***, 2007 (3) SLR 445, he will be entitled to receive arrears of disability element from preceding three years from the date of filing of this O.A. This O.A. was filed on 09.04.2019.

13. We further direct the respondents to send all required documents to the applicant through special courier so that the applicant who has provided more than 19 years to the nation and is 100% disabled should not have to wander hither and thither for the sake of obtaining disability pension.

14. The respondents are to give effect to this order within three 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% per annum on the amount accrued from due date till the date of actual payment.

15. Registry is directed to provide copy of this order to the Ld. Counsel for the respondents for onward communication to ensure compliance.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice Virender Singh)
Chairperson

Dated: September, 2019

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