

RESERVED
COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 75 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.1099311K Ex Swr Ravindra Singh,
S/o Sri Viram Singh,
R/o Vill & Post Bhatona,
Distt Bulandshahr (UP).

.....Applicant

Ld. Counsel for :
the Applicant

Shri KK Mishra,
Advocate

Versus

1. Union of India through its Secretary,
Min of Defence,
New Delhi.
2. Chief of Army Staff,
Army Headquarters,
New Delhi.
3. Officer-in-Charge,
Armored Corps Records,
Ahmednagar,
PIN 414002.
4. PCDA (P) Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Bhanu Pratap Singh,**
Respondents **Centre Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Virender Singh, Chairperson”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

“(i) to quash PCDA (P) Allahabad letter No.G-3/51/145/5-96 dated 23.9.1996 (Annexure A-3 to OA).

(ii) to direct the respondents to grant 20% disability pension to the applicant from the date the applicant was discharged from the service i.e.31 March 1996.

(iii) to direct the respondents to thereafter, round off this percentage of disability to 50% as per the policy on the subject and pay the arrears of disability pension with interest as applicable.

(iv) Any other relief which the Hon’ble Tribunal may consider appropriate may be granted in favour of the applicant.

(v) Cost of the application be awarded to the applicant.”

2. The brief facts are that the applicant was enrolled in the Armoured Corps on 03.09.1991 and invalided out of service on 31.03.1996 under item no.iii (v) sub clause 2(a) of table annexed to Rules 13(3) of Army Rules, 1954. He had rendered only 04 years, 06 months and 29 days service in Army. The Release Medical Board held at Military Hospital, Babina on 03.09.1996 opined his disability “**GENERALISED SEIZURE 345**”, @ 20% for 02 years to be Neither Attributable to Nor Aggravated (NANA) by military service. The disability pension claim of the applicant was accordingly rejected vide letter dated 23.09.1996. The representations

submitted by the applicant against rejection of his claim for disability pension were not replied by the concerned authorities. Hence this O.A.

3. Learned Counsel for the applicant submitted that the applicant was enrolled in the Indian Army after he was found mentally and physically fit by the medical board. Before 1994, the Fits of the alleged disease of “**Generalized Seizure (345)**” had never occurred to the applicant, therefore, it is wrong to say the disease is not attributable to military service. Learned counsel for the applicant further submitted that there is nothing on record to show that the applicant was suffering from the disease of “**Generalized Seizure (345)**” before joining the army and he suffered from the Fits of the alleged disease only in the beginning of 1994, as such the disability had occurred due to military service and as such disability pension should be granted to the applicant.

4. Learned counsel for the respondents submitted that applicant was suffering from “**Generalized Seizure (345)**” and was initially downgraded to medical category “BEE” (Temporary) for two years effect from 09.03.1996. The claim of disability pension was processed to PCDA (P), Allahabad, who in line with the opinion of RMB rejected the same vide letter dated 23.09.1996. The decision of the PCDA (P), Allahabad was communicated to the applicant vide Armoured Corps Records letter dated 15.11.1996 with an advice to prefer an appeal against the rejection within six months. However, the applicant did not prefer any appeal. He concluded that the claim of disability pension of applicant has been rightly rejected and pleaded for dismissal of the O.A.

5. We have heard both the sides and perused the records. This is an interesting case wherein the applicant has been discharged from service through a Release Medical Board and not through an Invalidment Medical Board. We have noted that the Hon'ble Supreme Court has clearly clarified the law that invalidment due to low medical category should be through IMB and not RMB vide its judgment in the case of **Union of India & others vs. Rajpal Singh** 2009 (1) SCC 216. Thus considering the belated stage of the case and all related issues, we are of the opinion that end of justice will be met if the RMB of the applicant is deemed to be IMB and the applicant is deemed to have been invalided out of service.

6. Coming to the Release Medical Board now deemed to be invalid medical board, we have noted that the only reason for denying attributability of disease to military service is that the board has opined the disease to be not connected with service and disease due to 'unknown cause'. We find this reason to be inadequate to justify denial. If the board has opined the cause of disease as unknown then we are of the opinion that the benefit of doubt goes in favour of the applicant and hence the disability of the applicant "**Generalized Seizure (345)**" @ 20% for two years should be considered as 'Aggravated by military service' in line with law settled by the Hon'ble Supreme Court in the case of **Dharmvir Singh Vs. Union of India & others** reported in (2013) 7 SCC 316.

7. Thus in the result, the Original Application No. 75 of 2019 is **partly allowed** and the impugned orders of the respondents are set aside. The disability of the applicant "**Generalized Seizure (345)**" @ 20% for two

years is to be considered as AGGRAVATED by military service. The respondents are directed to grant disability pension to the applicant @ 20% for two years from the date of invaliding out of service i.e. 31.03.1996, which would stand rounded off to 50% in terms of the decision of Hon'ble The Apex Court in the case of **Sukhvinder Singh vs. Union of India & others**, reported in (2014) STPL (WEB) 468 SC. However, due to law of limitations as laid down vide Hon'ble Supreme Court order of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, the arrears of service element of disability pension will be restricted to three years preceding the filing of this O.A. The date of filing of this O.A. is 09.04.2018. The applicant is not eligible for any arrears for disability element for the two years period after discharge. His future entitlement to disability element will be subject to the outcome of RSMB. The respondents are further directed to refer the applicant's case to Re-survey Medical Board (RSMB) for reassessing the medical condition of the applicant for further entitlement of disability pension, if any. The respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till actual date of payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice Virender Singh)
Chairperson

Dated: September, 2019
PKG/SB