

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 159 of 2018

Monday, this the 30th day of September, 2019

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

No 15769754Y Ex Gnr Arun Kumar Singh, S/o Bijay Bahadur Singh, R/o Village No. 1 Gulam Abas Lane Sackia, District – Howrah presently resides at Avash Vikash Colony Harpur Balia (U.P.)

..... Applicant

Ld. Counsel for the Applicant : **Shri S.G. Singh**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Additional Director General Personnel Services, Adjutant General’s Branch Army headquarter DHQ PO, New Delhi-110011.
3. Sena Vayu Raksha Abhilekh, Army Air Defence Records, (FPO PIN-908803, Nasik Road Camp - 422102)
4. Senior Record Officer for OIC Records.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri R.C. Shukla**,
Central Govt. Counsel

ORDER**“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

- (a) *Issue/ Pass an order or direction of appropriate nature whereby commanding the respondents to produce the record in original and thereafter quash the impugned orders dated 05.11.2007 passed by opposite party no. 1 whereby rejecting the second appeal filed by the applicant against the order dated 03.05.2006 passed by the opposite party no. 2 in First Appeal preferred by the applicant against the denial of his claim of disability pension annexed as Annexure no. A-1 (i) & (ii) with the application.*
- (b) *Issue/pass an order or direction of appropriate nature whereby commanding the respondents to grant the disability pension to the applicant forthwith.*
- (c) *Allow the application with all consequential benefits with exemplary cost.*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 15.02.1999 and was invalided out from service on 30.07.2002. The Invaliding Medical Board (IMB) assessed his disability ‘**CNS (INV) SEIZURES**’ @ 30% for life but opined the disability to be neither attributable to nor aggravated (NANA) by military service. The claim of the applicant for grant of disability pension was rejected by the respondents vide order dated 05.06.2003 against which he preferred First Appeal which was rejected by the respondents vide order dated 03.05.2006. Being aggrieved the applicant preferred Second Appeal

which too was rejected by the respondents vide order dated 05.11.2007. It is in this perspective that the applicant has preferred the present O.A.

3. The delay in filing the Original Application has been condoned vide order dated 27.02.2018 passed by this Tribunal.

4. Ld. Counsel for the applicant pleaded that the applicant was fully fit at the time of his initial enrolment. He has picked up this disease in the year 2000 when he was posted at 510 Air Defence Missile Regiment (Self propelled). He vehemently pleaded for disability pension to be granted to the applicant.

5. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as NANA by the IMB hence applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding Medical Board. The only question which needs to be answered is whether the disability of applicant is attributable to or aggravated by military service?

7. In the instant case the applicant on completion of his training was posted to 510 Air defence Missile Regiment on 04.03.2000 and served in the unit till the date of his invalidment. On scrutiny of IMB we have noted that after 06 months of completing his training as recruit, the applicant got his first attack of 'SEIZURES'. He was examined and treated by the Medical Specialist at 167 Military Hospital, Lt. Col. M. Kohli. The Specialist after discussing the disease with applicant has clearly written that onset of his disease was in 1995 after a RTA (Road traffic accident).

He has also written in his report that the applicant has a history of 'SEIZURES' in 1995 and that he was on 'DILENTIN' (an anti Seizures medicine) for two years before joining service.

8. Thus after a clear evidence in the RMB from the report of the Specialist Doctor at 167 Military Hospital, we are in no position to assume or presume that this disease is because of stress and strains of military service. It also appears to be a case of concealment of vital medical information by the applicant at the time of enrolment. Thus considering all issue we are of the opinion that the applicant has failed to prove his case and his Original Application is liable to be dismissed.

9. In view of above Original Application No. 159 of 2018 is **dismissed** as devoid of merit.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice Virender Singh)
Chairperson

Dated: September, 2019
AKD/-