

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 93 of 2019

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)”

6363328-A Ex. Hav. Vishram Singh, S/o Late Shri Tularam,
Village – Nindouli, Post – Bhoranjpur, District Kannauj, U.P., PIN-
209720.

..... Applicant

Ld. Counsel for the : **Shri Rohitash Kumar Sharma**, Advocate.
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence,
DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQ of Ministry of
Defence (Army), DHQ P.O., New Delhi-110001.
3. Additional Director General Personnel Services (PS-4),
Integrated HQ of Ministry of Defence (Army, DHQ PO, New
Delhi-110011.
4. Sena Seva Corps Abhilekh (Dakkshin), ASC Records
(South), Bangalore, PIN-560007.
5. Controller Defence Accounts (Pension), Draupadi Ghat,
Allahabad.

.....**Respondents**

Ld. Counsel for the : **Mohd. Zafar Khan**,
Respondents. 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) *Call for records including the Invalid medical board proceedings.*
- (b) *Quash the order dated 20.12.2017, 30.03.1994 and 18.12.2017 of respondents rejecting the appeal of the Applicant dated 02.11.2017 for grant of disability pension as well as finding of medical board by which the disability of the applicant has been found to be not attributable or aggravated by military service.*
- (c) *Issue direction to respondents to grant disability pension to the Applicant w.e.f. 30.03.1993 and arrears to be paid along with interest of 18 percent in a time bound manner.*
- (d) *Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.*

2. Briefly stated facts of the case are that the applicant was enrolled in Corps of ASC in Indian Army on 10.04.1969 and was invalided out of service on 29.03.1993 in Low Medical Category under Rule 13(3) III (iii) of the Army Rules, 1954. At the time of invaliding from service, the Invaliding Medical Board (IMB) held at Military Hospital, Ahmedabad on 20.02.1993 assessed his disability '**SCHIZOPHRENIA - 295**' @60% for two years but opined

the disabilities to be neither attributable to nor aggravated (NANA) by military service. The applicant's claim for disability pension was rejected on 30.03.1994 by the respondents. The applicant had preferred 1st Appeal dated 02.11.2017 which was rejected vide letter dated 18.12.2017. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof. He further submitted that in similar cases, Hon'ble Apex Court and various Benches of the Armed Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that disabilities of the applicant i.e. '**SCHIZOPHRENIA-295**' has been regarded as 60% for two years by IMB. However, since the disability is opined by IMB to be neither attributable to nor aggravated by military service his claim for grant of disability

pension was correctly rejected. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding Medical Board proceedings. The questions which need to be answered are of two folds :-

- (a) Whether the disability of applicant is attributable to or aggravated by military service?
- (b) Whether the applicant is entitled for the benefit of rounding off of his disability pension?

6. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316. In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same in the following words:-

"29.1. 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 over. The question whether a disability is attributable to or aggravated by military service to be determined under the Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix II (Regulation 173).

29.2. 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 read with Rule 14(b)].

29.3. The 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).

*29.4. 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)].
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29.5. 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 [Rule 14(b)].

29.6. 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 [Rule 14(b)]; and 29.7. It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the Guide to Medical Officers (Military Pensions), 2002 - "Entitlement: General Principles", including Paras 7, 8 and 9 as referred to above (para 27)."

7. Thus in light of the settled position of law on attributability, we find that the IMB has denied attributability to the applicant only by endorsing that the disability '**SCHIZOPHRENIA - 295**' to be neither attributable to nor aggravated (NANA) by military service and is a constitutional disorder, not related to military service. The disability was first detected in the year 1992 whereas the applicant was enrolled in the year 1969 i.e. after about 23 years of military service. We are therefore of the considered opinion that the reasons given in IMB for declaring disease as NANA are very brief and cryptic in nature and do not adequately explain the denial of

attributability. Therefore, benefit of doubt in these circumstances should be given to the applicant in view of the settled law on this matter vide ***Dharamvir Singh vs Union of India & Ors*** (supra) and the disability of the applicant should be considered as aggravated by military service, as such the applicant is entitled for the disability element for two years from the date of his discharge i.e. 29.03.1993.

8. As far as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996, hence, prima facie the applicant is not entitled to the benefit of broad banding for period in question i.e. two years from 29.03.1993.

9. Since the applicant's IMB was valid for two years w.e.f. 29.03.1993, hence, the respondents will now have to conduct a fresh RSMB for him to decide his further entitlement to disability element.

10. In view of the above, the **Original Application No. 93 of 2019** deserves to be partly allowed, hence, **partly allowed**. The impugned order dated 30.03.1994, 20.12.2017, 18.12.2017, passed by the respondents, are set aside. The disability of the applicant '**SCHIZOPHRENIA - 295**' is to be considered as aggravated by military service. The applicant is held to be entitled to disability pension @60% for two years from the date of discharge of the applicant i.e. 29.03.1993. The arrears of disability

pension shall however be restricted to three years before the date of filing this Original Application. Hence, the applicant will not be entitled to any arrears of disability element for the period of two years from his discharge. The applicant is already in receipt of service element since his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability element. Respondents are required to give effect to the order within four months from the date of receipt of a certified copy of this order.

No order as to costs.

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

Dated: September, 2019
AKD/-

(Justice Virender Singh)
Chairperson