

RESERVED
Court No. 1

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

ORIGINAL APPLICATION No. 676 of 2017

Thursday, this the 17th day of May, 2018

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”

No. 13999863-X RECT Raj Kumar Singh son of Gopal Singh, resident of village & Post office Bhanna Jatan, Police Station- Jahangirpur, Tehsil Khurja, District Bulandshahre (U.P.) PIN-203141.

..... Applicant

Ld. Counsel for the Applicant : Shri Sudhir Kumar Singh,
Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi - 110011.
2. The Chief of the Army Staff, Sena Bhawan,, New Delhi - 110011.
3. S.R.O., OIC Records, Army medical Corps office, PIN-900450 C/O 56 APO.
4. Commanding Officer, Record office, Garhwal Rifles, PIN-900450 C/O 56 APO.
5. Additional Directorate General, Personnel Services, AG’s Branch, IHQ of Ministry of defence (Army), 900450 C/O 56 APO.

.....Respondents

Ld. Counsel for the Respondents. :Dr. S.N.Pandey,
Advocate, Central Govt. Standing Counsel

ORDER**“Per Hon’ble Air Marshal BBP 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) To quash the impugned order dated 22.01.2003 passed by the OP NO. 3 which is annexed as Anenxure No 1 to this original Application.

(B) To pass an order or direction commanding the respondents to grant the disability pension of the applicant from the date of discharge i.e. 06.11.2000.

(C). To pass an order or direction commanding the respondents to pay the arrear of the disability pension from the date of discharge alongwith the interest @ 18% per annum till actual realisation of the aforesaid amount.

(d) To pass an order or direction commanding the respondents to grant the benefits of rounding off of his disability pension to the tune of 50% in term of Govt of India letter dated 31.01.2001 and various judgment of Apex Court as well as this Hon’ble Tribunal.”

2. The facts in nutshell are that the Applicant was enrolled in the Army Medical Corps on 22.07.2000 and was invalidated out from service with effect from 07.11.2000 after rendering three months and sixteen days of service under Rule 13 (3) Item IV of Army Rule 1954 on account of disability which was diagnosed as COMPLEX PARTIAL

SEIZURE. The Invaliding Medical Board was held at Command Hospital (Central Command) Lucknow on 13.10.2000 which viewed the disability as neither attributable to nor aggravated by military service. The disability was assessed as 20% for two years. The claim for disability pension was processed and forwarded to the PCDA (P) Allahabad which was rejected vide communication dated 10.12.2002 on the ground that the disability was neither attributable to nor aggravated by military service and it was constitutional in nature. The aforesaid decision of the PCDA (P) was communicated to the Applicant vide letter dated 22.01.2003 attended with the advice that if so desired, he may file appeal within six months. No appeal was filed by the applicant within six months and from the record, it would transpire that it was filed after efflux of 12 years on 21.01.2015 which being inordinately delayed, was duly returned. Thereafter, the applicant preferred a representation dated 19.08.2016 which was processed and duly forwarded to respondent no 5. It is in this perspective that the present O.A has come to be filed.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also gone through the materials on record.

4. The threadbare submission advanced across the bar by learned counsel for the Applicant is that he was recruited in

the Indian Army in physically fit condition and the disability that has occurred, had set in during Army Service and that in the light of various decisions of the Apex Court as well as of this Tribunal, the Applicant is entitled to grant of disability pension.

5. Per contra, it is contended that the disability was detected immediately after one month from the date of recruitment and during treatment administered to the Applicant it was diagnosed as COMPLEX PARTIAL SEIZURE and in consequence, Invaliding Medical Board was held which opined the disability as neither attributable to nor aggravated by military service. It is further contended that the total service rendered by the Applicant was a little over three months. The further contention is that the disability was assessed by the competent expert body whose conclusion is to be accepted as correct unless contradicted by any other medical board by cogent evidence.

6. Certainly there is delay in filing the appeal despite being advised by the competent authority to file the appeal within six months. It would appear that the PCDA (P) Allahabad rejected the claim for disability pension vide communication dated 10.12.2002 which was communicated vide communication dated 22.01.2003 but the applicant filed the first appeal on 21.01.2015 after efflux of 12 years. It would also appear that as per the medical reports

produced before the Court, the disease of the applicant is stated to be 'neither attributable to nor aggravated by' Military Service but in Column 2 (d) it has been stated that the disability is 'Constitutional in origin having a casual relationship with the service factor. The opinion of the Medical Board is also accompanied with the details given by the Specialist which diagnosed the disability as **"COMPLEX PARTIAL SEIZURES onset 22 Aug 2000 with abnormal behaviour followed by unconsciousness"**. The Specialist further mentions that **"the patient had second episode on 25 Aug 2000 in which patient had stiffening body and fall with injury chin (Lacerated wound). Patient is on AED. No reoccurrence since then. The profile is suggestive of COMPLEX PARTIAL SEIZURES WITH SECONDARY GENERALISATION. He is unlikely to be a fit soldier and need observation"**. It is thereafter that the Invaliding Medical Board was held. The view of the Medical Board, which is sufficiently self-explanatory, has been accepted by the Appellate Authority and in terms of the judgment of the Supreme Court in the case of **Controller of Defence Accounts (Pension) and others vs. S. Balachandran Nair AIR 2005 SC 4391**, the same would get primacy and in any case there is no material before the Court to even create a reasonable doubt in the report of the Medical Board.

7. The learned counsel for the Applicant pleaded that the case of the applicant is squarely covered by the case of Dharamvir Singh Vs Union of India and others reported in **(2013) 7 Supreme Court Cases 316**. Hence his disability is to be considered as attributable to military service.

8. We have given our anxious consideration to the pleadings from both sides during hearing and the facts on record. Seizure is a disease which cannot be detected at the time of initial enrolment and considering that the first attack had occurred exactly within one month of enrolment and second attack had occurred three days after the first attack, we cannot give benefit of doubt to the applicant due to his limited exposure of one month to military environment and training and we are of the view that the medical opinion that the disease is constitutional in nature and is neither attributable to nor aggravated by military service, is correct.

9. Accordingly, this O.A has no force and is dismissed, while leaving the parties to bear their own costs.

(Air Marshal BBP Sinha) (Justice S.V.S. Rathore)
Member (A) Member (J)

Dated: May, ,2018
MH/-