

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 205 of 2019**

Wednesday, this the 17th day of February, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 14536409 Ex Sep Khushhal Singh
 S/o Late Sude Singh
 R/o Village – Kalwadi, PO – Churani, PS – Rikhanikhaal,
 District – Pauri Garhwal (Uttarakhand)
 Presently residing at House No. L-1/152, Vinay Khand,
 Gomti Nagar, Lucknow (UP)-226010

..... Applicant

Ld. Counsel for the Applicant: **Shri K.K.S. Bisht**, Advocate

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block New Delhi-110011.
2. Addl. Dte. Gen. Personnel Service, Adjutant General's Branch, Integrated HQ, MOD (Army), DHQ PO, New Delhi-110011.
3. C.D.A. (P) Draupadighat, Allahabad (UP).
4. Senior Record officer, EME, Secunderabad.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
 Central Govt Counsel.

ORDER

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

“A. A direction to quash/set aside the order No. 7(633)/200/D(Pen A & AC) dated 14.02.2001 passed by the respondent No. 2 as well as the order dated G3/86/9162/IX/1414 dated 17.12.1986 passed by the respondent No. 3 after summoning the same from its original.

B. A direction to grant disability pension to the applicant as per disability pension rules w.e.f. 09.03.1986.

C. To summon the entire records of the applicant pertaining to computation of his disability pension.

D. Any such other order or direction which this Hon'ble Tribunal may deem just and proper in the circumstances of the case.

E. Allow this original application with cost.”

2. Briefly stated facts of the case are that the applicant was enrolled in the Army on 20.12.1979 and was invalided out from service on 08.03.1986 being placed in low medical category 'EEE' under Army Rule 13 (3) III (iii). The Invaliding Medical Board (IMB) assessed his disability “**SCHIZOPHRENIA PSYCHOSIS**” @ 50% for two years and opined the disability as neither attributable to nor aggravated by military service (NANA). The disability claim of the applicant was rejected by PCDA (P) Allahabad vide their letter dated 17.12.1986. The applicant submitted petitions dated 18.07.1987 and 27.09.1988 which were suitably replied by the respondents vide letter dated 04.08.1987 and 14.10.1988 respectively. Thereafter, applicant preferred an appeal dated nil which was rejected vide order dated 14.02.2001. Then applicant submitted an application under RTI seeking some information which was also replied vide letter dated 09.08.2009. The applicant submitted a petition dated 28.08.2009 which was also replied by the respondents vide letter dated 20.10.2009. The applicant further submitted a grievance application dated 06.06.2017 which was also replied by the respondents vide

letter dated 22.06.2017. It is in this perspective that the applicant has preferred the present O.A.

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 contacted during the service, hence it is attributable to and aggravated by Military Service. He submitted that the act of overruling the recommendations of IMB by higher competent authority of PCDA (P) was wrong and should be set aside. He placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Sukhvinder Singh vs. Union of India***, Civil Appeal No. 5605 of 2010, decided on 25.06.2014 and pleaded that this Hon'ble Tribunal has been pleased to pass the several order in favour of the applicants in similar circumstances and therefore, applicant also be granted disability pension @ 50% for two years from the date of discharge and thereafter, RSMB to be conducted for further assessment of disability.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. "**SCHIZOPHRENIA PSYCHOSIS**" has been regarded as 50% for two years by IMB as neither attributable to nor aggravated by military service and not connected with service. Hence, as per Rule 173 of Pension Regulations for the Army 1961 (Part-1), applicant is not entitled for disability pension. He pleaded for dismissal of the O.A.

5. Heard learned counsel for the parties and perused the material placed on record. We have also gone through the IMB and the rejection order of disability pension claim. The question before us is simple and straight i.e. – is the disability of applicant attributable to or aggravated by military service?

6. The law on attributability of a disability has already been well settled by the Hon'ble Supreme Court in the case of ***Dharamvir Singh Vs. Union of India and Ors***, (2013) 7 SCC 213. 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)]. [pic]

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. In view of the settled position of law on attributability/aggravation, we find that the IMB has denied attributability/aggravation to applicant only by endorsing a cryptic sentence in the proceedings i.e. 'A constitutional disease, not connected with service'. We do not find this cryptic remark adequate to deny attributability/aggravation to a soldier who was fully fit since his enrolment and the disease in question had first started on completion of six years of service, therefore, we are of the considered opinion that the benefit of doubt should be given to applicant as per the Hon'ble Supreme Court judgment of ***Dharamvir Singh*** (supra) and his disability should be considered as aggravated by military service.

8. In view of the above, applicant is held entitled to 50% disability pension for two years from his date of discharge from service.

9. As a result of foregoing discussion, the O.A. is **allowed**. The impugned orders are set aside. The disability of the applicant is to be considered as aggravated by military service. The applicant is entitled to disability pension @ 50% for two years from the date of discharge from service. The respondents are directed to grant disability element @ 50% for two years from the date of discharge from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. The respondents are also directed to conduct a Re-survey Medical Board

for the applicant to assess his further entitlement of disability pension.

Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: February, 2021

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