

**IN THE ARMED FORCES TRIBUNAL  
REGIONAL BENCH, GUWAHATI  
OA - 07 of 2023**

**CORAM:**

**HON'BLE MR JUSTICE DHARAM CHAND CHAUDHARY, MEMBER (JUDICIAL)  
HON'BLE AIR MARSHAL BALAKRISHNAN SURESH, MEMBER (A)**

**Army No.14702695  
Ex Sep Alen Kom  
Vill Nagirong PO Moirang  
DistChurachandpur, Manipur.**

..... Applicant

By legal practitioner for  
Applicant.

**Mr. A.R.Tahbildar.**

**-VERSUS-**

- 1. The Union of India,  
Represented by the Secretary,  
Ministry of Defence  
Sena Bhawan, New Delhi-1.**
- 2. Records, The Kumaon Regiment  
PIN 900473  
CV/ 56 APO.**
- 3. Additional Directorate General of  
Personnel Services, PS-4(d)  
Adjutant General's Branch  
IHQ of MOD (Army), DHQ.,  
PO New Delhi.**
- 4. The Principal Controller of Defence Accounts,  
(Pension), Allahabad  
PIN-211014**

..... Respondents

By Legal Practitioner for the  
Respondents,  
**Mrs Deepanjali Bora.**

**Date of Hearing : 24.01.2024  
Date of order : 24.01.2024**

**ORDER (ORAL)**

***(Dharam Chand Chaudhary, Member(Judicial).***

(1) Heard learned counsel of both sides.

(2) In this application following directions have been sought to be passed against the respondents

- (i) To quash and set aside the impugned order No. G-3/69/123/7-96 dated 27.12.1996 (Annexure -B/Page No.15) issued by the Sr. Accounts Officer(Pensions) rejecting thereby applicant's claim for disability pension.
- (ii) To direct the authorities to grant disability pension to the applicant with rounding-off benefit @ 50% and release the arrears restricting the same to 3 years preceding the date of institution of this OA in this Tribunal
- (iii) To pass any other and further order as deemed fit and proper in the given facts and circumstances of the case.

(3) The facts in brief are that the applicant was enrolled in the Army on 30.08.1990 in a fit state of health. He had undergone the training and was subsequently posted out. While in service he was diagnosed with 'Generalised Seizures' and placed in low medical category. The Invalidating Medical Board was constituted and he was invalidated out of service after four years and three months on and w.e.f. 29.11.1994. The proceedings of the medical board were not made available to the applicant and he was not aware of the percentage of the disability he incurred upon.

(4) On his invalidation from service the applicant was not granted any disability pension. Therefore, the applicant submitted an application dated 25.02.2015 (Annexure A to the OA) to respondent No. 2 through 2-NAGA Regiment. The said

respondent vide letter dated 26.03.2015 (Annexure-D) informed the applicant that his claim for the grant of disability pension has been considered and rejected on the ground that the disability he incurred upon is neither attributable to nor aggravated by military service. On rejection of his claim he had not opposed the same at that time and rather believed that he is not entitled to any pension. However, it is in the month of April 2022 while attending an Ex-servicemen Rally that he came to know about his entitlement to the disability pension. Thereafter the applicant submitted an application dated 12.04.2022(Annexure E) to respondent No.2 for reviewing his case. He also raised a grievance on CPGRAMS PORTAL on 23.04.2022(Annexure-F) but to no avail. He also filed an appeal on 06.08.2022(Annexure-G) followed by grievance on CPGRAMS portal dated 16.08.2022(Annexure-H). The respondent No.2, however, had rejected the same also vide order dated 31.08.2022(Annexure-I). Aggrieved thereby this application has been filed for seeking the indulgence of this Court in the matter.

(5) The respondents when put to notice have filed reply to the Original Application. The factual aspect as mentioned in OA has not been disputed at all. The claim of the applicant, however, has been rejected on the sole ground that the service record of the applicant is not available with the respondents, having been destroyed on completion of the statutory period. Also that the disability he incurred upon was neither attributable to nor aggravated by military service. He, therefore, is stated to be not entitled to the grant of disability pension.

(6) We have heard learned counsel representing the parties on both sides and also gone through the records.

(7) We find the present a case which is squarely covered by the judgment of Regional Bench Chandigarh of this Tribunal passed in OA No.1651 of 2017 titled **Bhoom Singh v. Union of India** on 22.01.2019 and also by the judgment of the

Hon'ble Apex Court in **Dharamvir Singh v. Union of India** (2013) 7 SCC 316 and **Sukhvinder Singh v. Union of India** Civil Appeal No.5605 of 2010 decided on 25.06.2014\*.

(8) Although learned Senior Panel Counsel did not agree with the submissions made on behalf of the applicant, yet without assigning any reason as to why the law laid down by this Tribunal and by the Hon'ble Apex Court in the judgments cited (supra) is not applicable in this case. The only stand in the reply that the original record pertaining to the service of the applicant is not available is hardly of any help to the respondents for the reason that the applicant having otherwise made out a case for the grant of disability pension in terms of the law laid by the judgments cited supra the same cannot be declined.

(9) As a matter of fact, the case of *Bhoom Singh* is identical to the present one because in that case also service record/medical record was not available with the respondents notwithstanding, he was found to have been discharged from service after having been placed in low medical category and was held entitled to the grant of disability pension relying on the discharge certificate he placed on record.

(10) In the case in hand the reason given for release/discharge of the applicant is his placement in low medical category BEE(P) on the recommendation of the Release Medical Board. The discharge book, which we have perused, contains entries to this effect in column 9 which reads as under:

"Discharged from service under Army Rule 13(3) II(V) read in conjunction with Army Rule 13(2A) being shelter apt not available before fulfilling the conditions of enrolment in low med cat BEE(P) by a Rel Med Board."

(11) When the respondents did not have records of this case, allegedly destroyed on completion of the period prescribed for retention thereof, on what basis the plea that the applicant is not entitled to the disability pension as the disability he incurred upon was held to be neither attributable to nor aggravated by military service has been raised in their defence? Otherwise also there is no denial to the fact that the applicant has been invalidated out of military service on medical ground.

(12) In *Sukhvinder Singh's* case(supra), the Hon'ble Apex Court has held that as and when a member of Armed Forces is invalidated out of military service it has to be assumed perforce that his disability was above 20% and as per Rules/Regulations he is entitled to the grant of disability pension. The disability leading to invalidation out of service would attract the grant of pension treating the disability as 50%.

(13) Now coming to the law laid down by the Hon'ble Apex Court in *Dharamvir Singh's* case cited supra, when at the time of enrolment of a soldier in the Indian Army no history of any ailment came to the notice of Medical Board nor he is found to be suffering from a disease nor any note to this effect is recorded by the Medical Board in the documents pertaining to his recruitment and if during service he fell ill or incurred any disability while in service the only presumption would be that such ailment/disability was attributable to and aggravated by military service.

(14) Having said so and such being the legal and factual position the stand taken by the respondents is neither legally nor factually sustainable. On the other hand, the only inescapable conclusion that can be drawn would be that the applicant is entitled to the grant of disability pension which includes both disability element and service element.

(15) For the foregoing reasons this application succeeds and the same is accordingly allowed. The order under challenge is quashed and set aside. The applicant is held entitled to the disability pension comprising service element and disability element both @20% from the day next to the date of his discharge from service i.e. 30.11.1994 and by rounding it off to 50% w.e.f. 01.01.1996 for life as per the ratio of the Judgement of the Hon'ble Supreme Court in **Civil Appeal No. 418/2012 titled Union of India Vs Ram Avtar decided on 10.12.2014**. The due and admissible arrears which shall remain restricted to three years preceding the date of institution of this application i.e. on 01.03.2023 be calculated and released to the applicant within three months from the date of receipt of certified copy of this order by learned standing counsel/OIC Legal Cell failing which together with interest @8% per annum till the entire amount is realised.

(16) The application is accordingly disposed of so also the pending Misc. Application(s), if any. No order as to costs.

(Air Mshl Balakrishnan Suresh)  
MEMBER (A)

(Justice Dharam Chand Chaudhary)  
MEMBER (J)

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