

SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION NO. O. A. 18 OF 2017

DATED :THIS *Eight* DAY OF MARCH, 2019

CORAM

HON'BLE JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, PVSM, AVSM, ADC,

MEMBER (ADMINISTRATIVE)

APPLICANT (S)	:	No. 15665810A Ex Hav Tapan Kumar Manik Vill. Dakhinapada, P.O. Ghantua, Dist. Balasore, Odisha - 756023
		<b>Versus</b>
RESPONDENT(S)	:	(1) The Union of India, Through Secretary Ministry of Defence South Block, DHQ, PO, New Delhi – 110 011
		(2) The Chief of the Army Staff Through Adjutant General Integrated HQ of MOD (Army) South Block, DHQ P. O. New Delhi – 110 011
		(3) The Secretary Department of Ex-Servicemen Welfare & Pension Ministry of Defence, South Block New Delhi – 110 011
		(4) The Officer In Charge The Records Signals PIN – 908770 C/O 56 APO
		(5) Principal Controller of Defence Accounts (Pensions) Draupadi Ghat. Allahabad - 211014

Counsel for the Applicant(s) : Mr. S. K. Choudhury, Ld. Advocate  
 Counsel for the Respondent(s) : Mr. Amitava Ghosh, Ld. Advocate

**ORDER**

**PER LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC, MEMBER (ADMINISTRATIVE)**

1. This O. A. has been filed u/s 14 of the Armed Forces Act 2007 praying for grant of disability pension and rounding off benefits to the applicant. In brief, the case is that the applicant as enrolled in the Army Corps of Signals on 20 Feb 1997 and was invalided out of service by Medical Board on 30 July 2013 under Army Rule 13 (3) III (iii), before completion of terms of engagement of service in Low Medical Category S5 (permanent for disability of "Other Non Organic Psychotic Disorder"). He had rendered 16 years 165 days of service in the Army for which he is in receipt of service pension. Since the applicant was placed in Low Medical Category S5 (permanent for disability as mentioned above), he was brought before the Invaliding Medical Board (IMB) which was held on 4 July 2013 at Military Hospital, Jabalpur wherein he was mentally and physically examined and his disability was opined as *"neither attributable to nor aggravated by military service and not connected with military service, due to a personality disorder not related to military service."*

2. This, therefore, debarred him for grant of disability pension although the Medical Board regarded the percentage of disablement at 40% for life. This decision was communicated to the applicant with an advice to prefer an appeal to the Appellate Committee on First Appeals (ACFA) against the decisions within six months if he was not satisfied with the above decisions.

3. The applicant accordingly preferred an appeal which was turned down by the ACFA on the plea that *"ID is a psychiatric illness which results from the interplay of endogenous (biological/genetic) and exogenous (environmental, psycho-social) factors. ID is conceded as attributable to military service if the onset occurs while serving in field Fd/HAA/CI areas/service, following MT accidents to catastrophic disasters within a year of service related to serious/multiple injuries. There were no service related attributable or aggravating factors."*

*There are no stresses including sexual abuse or physical abuse. Individuals serve in peace station following onset of ID till he is invalided out of service. Hence ID is conceded as neither attributable to nor aggravated by military service in terms of Para 54 (d) of Chapter VI GMO 2002, amendment 2008".*

4. This decision was communicated to the applicant on 27 June 2015 with an advice to prefer second appeal to Second Appellate Committee on Pension within six months from the date of receipt of the letter, if he was not satisfied with the decision of the ACFA. Thereafter, the applicant preferred second appeal dated 24 September 2015 which was examined by the Second Appellate Committee on Pension (SACP) which once again rejected as appeal on the same grounds on 05 October 2016.

5. Hence, Respondents have stated that since the applicant's disability was regarded as *"neither attributable to nor aggravated by military service and not connected by service by the Invaliding Medical Board, he is not eligible for grant of disability pension due to the policy constraints."*

6. Counsel for the applicant has argued that this issue is no longer res integra as once the individual was invalided out of service, he is entitled to disability pension. To support his claim, the counsel for the applicant has relied on the following judgments:

- (a) Dharamvir Singh vs. Union of India, Civil Appeal 4949 of 2013 arising out of SLP (C) 2940 of 2010.
- (b) Union of India and Others vs Rajbir Singh in Civil Appeal 2904 of 2011 dated 13 Feb 2015.

7. This Bench is also relying on the above two judgments along with judgment of Sukhvinder Singh vs. Union of India (2014 14 SCC 364). Para 11 of judgment of Sukhvinder Singh is reproduced as under:

*"11. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the armed forces; any other conclusion would tantamount to granting a premium to the Recruitment Medical Board for their own negligence.*

*Secondly, the morale of the armed forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appear to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the armed forces in invalided out of service, it perforce has to be asumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension."*

8. Thus, there appears to be no doubt in our mind that the applicant is entitled to disability pension @ 40% rounded off to 50% three years prior to the date of filing this appeal i.e. 2 Feb 2017.

9. The O. A. is accordingly disposed of.

10. The respondents had made a prayer at the time to reserving the judgement that if they receive an adverse order in this case, they may be permitted to appeal u/s 31 of the AFT Act to the Hon'ble Supreme Court. As there is no point of law of General Publicimportance, the appeal is not allowed.

11. No order as to cost.

12. Let a plain copy of this Order duly counter-signed by the Tribunal Officer be supplied to the parties upon observance of all requisite formalities.

**(LT GEN GAUTAM MOORTHY)**  
**MEMBER (ADMINISTRATIVE)**

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**(JUSTICE INDIRA SHAH)**  
**MEMBER (JUDICIAL)**