

RESERVED
Court No.1

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

Original Application No. 119 of 2016

Wednesday, this the 3rd day of April, 2019

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

No. 4001566Y Rect/Barber
Suresh Kumar Burdak
S/o Shri Sanwar Mal
Formerly of Dogra Regiment Centre, Faizabad (UP)
Permanent R/o Village Post – Patoda, Viya – Bishaau
District – Jhujnu (Rajasthan)
Presently R/o – C/o Sh. Ghan Shyam Sharma, L.I.G. – 64,
Mahavidya Colony, IInd Phase, Mathura (U.P.)

..... Applicant

Ld. Counsel for the Applicant : **Shri V.K. Sharma,**
Advocate

Versus

1. Union of India (The Secretary to the Government of India),
Ministry of Defence, South Block, New Delhi.
2. The Chief of Army Staff,
Defence Services Headquarters, New Delhi.
3. The Adjutant General (A.G. Branch),
PS-4 (D), Armed Forces Headquarters, New Delhi.
4. The Officer-Incharge Records
Records the Dogra Regimental Centre, Faizabad (UP).
5. The Controller General of Defence Accounts (Pensions),
Draupadi Ghat, Allahabad.
6. The Commandant,
Dogra Regimental Centre, Faizabad (UP)

..... Respondents

Ld. Counsel for the Respondents : **Mrs. Deepti P Bajpai,**
Central Govt Counsel.

ORDER**“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

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

- “(a) *That Order dated 07.05.2003 (Annexure A-1) passed by the Officer Incharge Records, Records the Dogra Regiment, Faizabad (UP) – 01, wherein intimating rejection of Applicant’s case of Disability Pension by the Principal Controller of Defence Accounts (Pension), vide its Order dt. 13.03.2003 (without providing copy of said order dt. 13.03.2003 of P.C.D.A., Allahabad and related proceedings of Medical Board to the Applicant). Nor any order of his Discharge from Service till date passed by the any competent Authority, may kindly be ordered to be quash and set-aside by this Hon’ble Tribunal.*
- (b) *That no order of his Discharge from service passed by any Competent Authority till date he may be ordered to be reinstated in service with all the consequential benefits.*
- (c) *That simultaneously his case for providing an alternate job to which he may be deemed fit physically may be considered Under Section – 47 of the Disability Act, 1947.*
- (d) *That copies of Medical Board Proceedings may be ordered to be provided to the Applicant so as to enable him to challenge the same as per the law in his Rejoinder Affidavit.*
- (e) *Allow any other and further relief as this Hon’ble Tribunal may deem fit and proper in the circumstances of this case, in order to meet the interests of justice.*
- (f) *Allow costs of this Application to the humble and socially and economically backward Applicant.”*

2. The factual matrix of the case are that the applicant was enrolled in the Indian Army on 13.09.2000 and invalided out of service after rendering 259 days of service on 30.05.2001 in low medical category EEE due to disease **“CHRONIC SUPPURATIVE OTITIS MEDIA (RT)-382”** with disability less than 20% (15-19%) for five years and considered it neither attributable to nor aggravated (NANA) by military

service. Disability pension claim of the applicant was rejected by the competent authority vide order dated 13.03.2003. Thereafter, the applicant was advised to prefer appeal within six months from the date of letter but no appeal was preferred by the applicant. After remaining silent for more than 12 years, the applicant served a legal notice dated 05.10.2015 through Shri V.K. Sharma, Advocate to the respondents and it was suitably replied by Records The Dogra Regiment vide letter dated 02.02.2016 that under the existing rules, the applicant is not eligible for grant of disability pension. Aggrieved by denial for grant of disability pension, the applicant has filed this Original Application.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Indian Army in physically and mentally fit condition after carrying out thorough medical examination by a team of medical officers and after holding him fit on all the prescribed medical and physical standards. After enrolment the applicant reported for training at Dogra regiment Centre, Faizabad. During the training he was slapped on his face by an Instructor resulted in bleeding in ear and he was told that if he speaks to anybody he will be thrown out of service and thus he remained quiet without any treatment of his bleeding ear. After few days, he complained the unbearable pain in his ear and thus he was referred to Military Hospital, Faizabad for medical aid. The authorities of MH Faizabad further referred to the applicant to Central Command Hospital, Lucknow and from where he was referred to R.R. Hospital, New Delhi and after treatment for a week there, he was referred back to Command Hospital, Lucknow and was sent back to MH, Faizabad. On 30.05.2001 he was verbally informed that medical Board held him medically unfit

for further service and was sent back to home without providing copy of medical board proceedings and discharge order. Learned counsel further submitted that as per rules and regulations on the subject, the applicant is entitled to grant of disability pension as the disability took place while in service and it shall be presumed to be attributable to and aggravated by Army Service. He placed reliance on the Hon'ble Supreme Court judgment in case of **Kunal Singh vs. Union of India & Another, Sajjan Singh vs. State of Rajasthan, Shiv Dass vs. Union of India & others, Rajbir Singh vs. The Commissioner, Secretary to the Govt. of Haryana and Mukhtiar Singh vs. State of U.P.** and pleaded that the applicant is entitled to disability pension.

4. On the other hand, learned counsel for the respondents submitted that the applicant has served for only 259 days as a recruit, however his disability was detected in second mandatory medical check up within 02 months of enrolment and has been invalided out from service in low medical category EEE with IMB opining the disability to be NANA and less than 20% for five years, hence, he is not eligible for grant of disability pension in terms of Para 135(e) of the Defence Service Regulations for the Army 1987 (Vol-I) and para 173 of Pension Regulations for the Army, 1961 (Part-I). Since the applicant was not fulfilling the primary conditions for grant of disability pension as laid down in Para 173 of Pension Regulations for the Army 1961 (Part-I), his claim for grant of disability pension has rightly been rejected by the competent authority. He pleaded for O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. We have also gone through the IMB.

6. On careful perusal of the record it emerges that the applicant was enrolled in the Army on 13.09.2000 and was found to be having Perforation Ear (Right) on 31.10.2000 during second mandatory medical check up of recruits by Regimental Medical officer Lt Col RCR Velinent. The applicant was thereafter referred to Senior Advisor, ENT for his opinion. After thorough examination, Consultant & HOD (ENT), Army Hospital (R&R), Delhi opined that the applicant is “Unfit in ENT for recruitment” for his disability “**CHRONIC SUPPURATIVE OTITIS MEDIA (RT)-382**”. Accordingly, the applicant was brought before a duly constituted Invaliding Medical Board at MH, Faizabad which held on 12.01.2001 and the applicant was recommended to be invalided out from service.

7. In order to prove the disability to be attributable to military service, the submission of learned counsel for the applicant is that during training he was slapped by his training officer. The applicant was discharged in the year 2001 and he has filed this O.A. in the year 2015 and during this period the applicant has nowhere complained to any higher authorities that he was slapped by his training officer. On the contrary, the applicant himself has made statement before the Medical Officer that he sustained injury on the right side of head while taking bath about 1½ months back. We feel it necessary at this stage to reproduce the said report of the Medical Officer which transpires that the applicant remained admitted in Army Hospital (R&R) Delhi Cantt from 09.11.2000 to 14.11.2000 and

during this period he made statement to the Medical Officer which has been annexed by him with O.A. and it reads as under :-

“17 yr old Rect is a transferred case from CH (CC) Lucknow for opinion of Consultant. He has been transferred as a case of CSDM (Rt) detected during second medical examination.

He gives h/o injury to (Rt) side of head while taking a bath 1½ months back. Following that there was discharge from (Rt) Ear for 5-6 days.

No H/o occasioned pain in the Rt Ear.

No h/o Tinnitus, Vertigo or hearing loss.”

In view of his own statement given to the Medical Officer, the case of the applicant that he was slapped by training officer is an afterthought which cannot be relied upon at such a belated stage.

8. We have given our anxious consideration on submissions made by both the parties and are of the considered opinion that the applicant was suffering from **“CHRONIC SUPPURATIVE OTITIS MEDIA (RT)-382”** prior to joining the service due to following reasons :-

(a) The disability was discovered in second mandatory medical check up of recruit by the Regimental Medical Officer within 02 months of his recruitment. The second mandatory medical is an extension of the first medical check up before enrolment.

(b) We agree with the opinion of the IMB that this disability existed before enrolment but was missed by Recruiting Medical Officer.

(c) Since the disability of the applicant was constitutional in nature, hence the same could not be detected during the initial medical examination at the time of enrolment, however, it has been detected in the second medical examination by ENT specialist which is done in greater detail and hence, it cannot be considered as attributable to or aggravated by military service under any circumstances.

(d) Additionally, a recruit under training is akin to a probationer and respondents have every right to reject a trainee from training and service if he does not meet the medical standards required by the organisation.

9. Apart from it, in identical factual background Co-ordinate Bench of this Tribunal dismissed *T.A. No. 1462/2010, Bhartendu Kumar Dwivedi* vide order dated 23.05.2011 wherein the applicant was enrolled on 21.01.2000 and was discharged on 23.05.2000 as he was suffering from Schizophrenia. Said disability was assessed @ 80% for two years and it was opined by the Medical Board to be neither attributable to nor aggravated by military service. Said order of this Tribunal has been upheld by Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 was dismissed on delay as well as on merits.

10. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated : April, 2019

SB

(Justice SVS Rathore)
Member (J)