

RESERVED
Court No.1

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

Original Application No. 295 of 2017

Tuesday, this the 2nd day of April, 2019

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

No. 8935129T Ex AC (U/T) Abhay Kumar
Son of Mahendra Prasad
Care of Devendra Upadhyay
House No. 249/2, Sikandarpura Naxul
Bara Barha, Alambagh,
Lucknow

..... Applicant

Ld. Counsel for the Applicant : **Shri D.S. Tiwari,**
Advocate

Versus

1. Union of India, through Secretary,
Ministry of Defence,
Government of India, New Delhi.
2. Chief of the Air Staff,
Air HQ, Vayu Bhawan,
New Delhi, PIN-110106.
3. The Chief Record Officer,
Air Force Record Office,
Subroto Park, New Delhi – 110010
4. The Chief Controller Defence Accounts,
Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Namit Sharma,**
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:-

- “(I) The Hon’ble Tribunal may be pleased to set aside the impugned rejection orders dated 23/12/2011 (Annexure No 1), 22-03-2016 (Annexure A-2) and second appeal rejection order dated 22-06-2017 (Annexure A-3).*
- (II) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from the date of discharge i.e. 21/10/2011 along with Broad Banding to 50% with its arrears and interest thereon at the rate of 18% per annum.*
- (III) Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.”*

2. The factual matrix of the case are that the applicant was enrolled in the Indian Air Force on 29.06.2011 and invalided out of service after rendering 115 days of service on 21.10.2011 in low medical category P5 due to disease **“EPILEPSY”** with disability @ 20% for life (Net assessment NIL for life) and considered it neither attributable to nor aggravated (NANA) by Air Force service. Disability pension claim was rejected by the competent authority vide order dated 11.11.2011. His first and second appeals were also rejected by the Appellate Committee vide letter dated 22.03.2016 & 22.06.2017 respectively. 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 Air Force in physically and mentally fit condition.

During the training he was ill treated by training staff. Due to stress and strain/tension on the day of his sister's marriage on 05.07.2011, he felt thirsty and giddiness with stomach upset and reported sick and was taken to Military hospital Belgaum where he was medical checked up and declared medically unfit for further training due to disability 'EPILEPSY' and was discharged from service on 22.10.2011 after holding an Invaliding Medical Board. Ld. 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 Air Force Service. The Ld. Counsel for the applicant has relied upon Hon'ble Apex Court judgment in the case of *Dharamvir Singh vs. Union of India & Others* in 2013 (7, SCC 13) and *Sukhvinder Singh vs. Union of India & Others* 2014 STPL (Web) 468 SC and pleaded that the applicant is entitled to disability pension.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant has served for only 115 days as a recruit and has been invalided out from service in low medical category P5 with IMB opining the disability to be NANA, hence, he is not eligible for grant of disability pension in terms of para 153 of pension Regulations for the Air Force, 1961 (Part-I). Since the applicant was not fulfilling the primary conditions for grant of disability pension as laid down in Para 153 of Pension Regulations for the Air Force 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 Air Force on 29.06.2011 and was brought to SMC on 05.07.2011 i.e. only after 6 days with convulsion and abnormal behaviour. During medical examination, the applicant has himself given similar history of episodes about 6 months back at his home town. The applicant was referred to MH Belgaum from where he was transferred to Command Hospital (SC) Pune on 07.07.2011. On 18.07.2011, he had a seizure attack at hospital and loss of consciousness for 1-2 minutes. Based on the medical board opinion, the applicant was placed in med category P-5 and was recommended to be invalided out from service in medical category APGP. Accordingly Invaliding Medical Board was held on 02.09.2011 and the applicant was invalided out from service for ID - Epilepsy.

7. 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 “**EPILEPSY**” prior to joining the service. The disease was detected within a short span of his enrolment i.e. 06 days and thus it may be inferred as a constitutional disease and cannot be considered as attributable to or aggravated by military service. Since it was a constitutional disease, hence the same could not be detected during medical examination at the time of enrolment. Additionally, status of 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.

8. 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.

9. 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)