

**COURT NO 1**  
**RESERVED**

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

**ORIGINAL APPLICATION No. 527 of 2017**

Wednesday, this the 3<sup>rd</sup> day of April, 2019

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 9011389K AC (U/T) IS Mishra, Eng/Fit, son of Shri Bhabuti Prasad Mishra, Resident of Shivpuri Colony (Behind Irrigation Department) Civil Lines, Gonda, Pincode-271001 (UP).

.....Applicant

Ld. Counsel for the : **Shri VP Pandey**, Advocate.  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, New Delhi-110106.
3. Directorate of Medical Services (Air) Air Headquarters, R.K. Puram, New Delhi.
4. Controller Defence Account (CDA) (AF) Pension Cell, Subroto Park, New Delhi-110010.
5. Commanding Officer, Mechanical Training Institute Air Force Tambaram, Madras (Chennai)-600046.

.....Respondents

Ld. Counsel for the  
Respondents.

:**Shri Namit Sharma**,  
Central Govt. Standing Counsel

**ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

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) *Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the impugned order dated 14 July 1992 (Annexure No A-1).*
- (ii) *Issue/pass an order or direction of appropriate nature to the respondents to quash/set aside the impugned order dated 01 Oct 1992 (Annexure No A-2).*
- (iii) *Issue/pass an order or direction of appropriate nature to the respondents to grant disability pension to the applicant for life with effect from the date of his discharge.*
- (iv) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (v) *Allow this application with exemplary costs.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 12.11.1990 and was invalided out of service after rendering one year and 66 days of service on 16.01.1992 in low medical category due to disease '**Leprosy Borderline Tuberculoid (BT)**' with disability @ 30% for two years neither attributable to nor aggravated by military service (NANA). Disability pension claim in respect of the applicant was rejected vide order dated 14.07.1992. Later representations submitted against rejection of disability pension claim did yield no fruitful result. Hence this O.A.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Indian Air Force in medically and physically fit condition. It was further submitted that 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. The Ld. Counsel further submitted that the applicant was invalided out in low medical category 'EEE' with disability element @ 30% for two years as such in view of Hon'ble Apex Court judgments for similar matters, he is entitled to grant of disability pension.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant had made complaint of white patch on posterior aspect of right elbow with decreased sensation within four months of start of initial training. On being referred to General Hospital (GH), Madras where a slit skin smear of AFB (LO) was done which was found to be negative. Thereafter the applicant was admitted to GH, Madras on 22.09.1991 where on investigation the applicant was found to be a case of Leprosy (BT) and he was put on MDT w.e.f. 28.10.1991. Subsequently the applicant was invalided out of service by a duly constituted IMB held at

Command Hospital, Air Force, Bangalore on 07.01.1992 with disability @ 30% for two years neither attributable to nor aggravated by military service. The Ld. Counsel for the respondents further submitted that the pension sanctioning authority has upheld the decision of the IMB and denied disability pension to the applicant on the ground that the invaliding disability is neither attributable to nor aggravated by military service. He pleaded the O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. The only issue before us that need adjudication is "Is the disability of the applicant attributable to or aggravated by military service?"

6. On careful perusal of the record it emerges that the applicant was enrolled in Indian Air Force on 12.11.1990 and the disability was first detected within four months of his enrolment as a recruit. It is well known that leprosy is caused by a bacteria which progresses very-very slowly in the body, therefore Medical literature clearly indicates that the symptoms of leprosy normally should not manifest before 02-05 years of acquiring infection. However, in the case of the applicant, the symptoms of leprosy have manifested within 04 months of his enrolment as a recruit. This clearly indicates that the applicant had acquired infection of this disease before joining the Army. Therefore,

keeping in view the incubation period of leprosy, we agree with the opinion of IMB that the applicant was suffering from the aforesaid disability prior to enrolment and it could not be detected during Recruitment Medical Board held at the time of enrolment and is therefore opined as neither attributable to nor aggravated by military service (NANA). Hence we do not find any valid reason to interfere with the findings of IMB.

7. 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

gsr

**(Justice SVS Rathore)**  
**Member (J)**

From : No 4471030N Ex Hav (Grade Nb Sub)  
Sunil Kumar Singh  
Armed Forces Tribunal, Lucknow  
3, RAK Marg, Lucknow Cantt-226002

To : Records The Mahar Regiment  
C/O 56 APO

PCDA (P)  
Draupadi Ghat, Allahabad-211014

NON RECEIPT OF GRADE PAY OF NB SUB

Sir,

1. I retired from service with effect from 31.12.2013 and am in receipt of pension with effect from 01.01.2014.
2. It is submitted that vide Part II Order No 1/05102013 dated 31.12.2013, where the applicant entitled for Nb Sub Grade, but at present applicant is not in receipt of payment of MACP of Nb Sub grade with effect from 31.12.2013. The Records Mahar Regiment issued Part II order for MACP of Nb Sub grade pay with effect from 31.12.2013, but PCDA (P), Allahabad has not released the amount of MACP of Nb Sub Grade from 31.12.2013.
3. In view of the above, I request that I may please be issued with pension for the rank of Grade Nb Sub vide the aforesaid Part II Order.

Yours faithfully,

(Sunil Kumar Singh)

Dated: 15 July 2018