

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

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

**ORIGINAL APPLICATION NO.392 of 2017**

Thursday, this the 04<sup>th</sup> day of April, 2019

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

No.14639765L Ex Rectt Chandra Kumar,  
S/o Pyare Lal Misra,  
R/o Gayatri Nagar, Bhatour Pher,  
Shaklaganj near Gyatri Temple,  
District Unnao.

.....Applicant

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

Versus

1. Union of India through the Defence Secretary,  
Ministry of Defence,  
New Delhi 110011.
2. Chief of the Army Staff, Integrated Head Quarter,  
Ministry of Defence, South Block, New Delhi.
3. Officer-In-Charge Records,  
EME Centre and Records, Secunderabad.
4. Principal Controller of Defence Account (Pension),  
Draupdi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Dr Shailendra Sharma Atal,**  
Respondents **Ld. Counsel for the Respondents.**

**ORDER**

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

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension. He has prayed for following reliefs :

*“(i) To issue an order or directions to Respondents to pay disability pension from the date of his invalidment i.e. 23 March 1998 till date and the same may be continued paying from month to month.*

*(ii) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*

*(iii) Cost of the appeal be awarded to the applicant.”*

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Army on 28.08.1997 in medically fit condition and invalided out of service during training as a recruit w.e.f. 23th March 1998 under Army Rule 13(3)(IV), as the applicant was placed in low medical category EEE due to his disability “**HANSEN’S DISEASE (BT)**”. The Invaliding Medical Board (IMB) considered the said disability as “neither attributable to nor aggravated by military service” (NANA) being pre existing and not connected with service and assessed the same at 100% for one year. The claim of the applicant for grant of disability pension was accordingly rejected by the PCDA (P), Allahabad on 05<sup>th</sup> July 2004. The fact regarding rejection of the disability pension was communicated to the applicant with liberty to prefer an appeal within six months. The applicant submitted a representation in April 2015 under Right to Information Act, 2005 which was suitably replied vide EME Records dated 29<sup>th</sup> April 2015. The applicant again submitted a petition dated 17<sup>th</sup> April 2015 for grant of disability pension which has been replied in the negative. Hence this O.A.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and has been discharged from service in Low Medical Category, as such, his disability should be

considered as attributable to and aggravated by military service and he should be granted disability pension.

4. While filing counter affidavit, the respondents have stated that the applicant suffered disability and was invalided out within a short span of 07 months of training as a recruit. The IMB has opined that his disability as NANA and “not connected with service”. Accordingly, PCDA (P) Allahabad has upheld the opinion of IMB and rightly rejected the claim of disability pension of the applicant. Learned counsel for the respondents further submitted that under the provisions of Rule 173 of Pension Regulations for the Army 1961 (Part-I), primary condition for grant of disability pension is that “Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over”. Hence the applicant is not eligible for grant of disability pension.

5. We have heard the parties and perused the IMB. The question before us is straight and simple i.e. is the disease of the applicant attributable to or aggravated by Military service.

6. On careful scrutiny of the IMB, we find that the IMB had opined that the diseases i.e. “**HANSEN’S DISEASE (BT)**” is neither attributable to nor aggravated by Military service and that it pre existed before entering into service and manifested late and is not connected with service.

7. We have tried to understand the “**HANSEN’S DISEASE (BT)**” and realised the following aspects of this disease :-

(a) This disease is also known by the common name “LEPROSY”.

(b) That this disease is caused by slow growing bacteria called *Mycobacterium Leprae*.

(c) This disease can adversely affect the nerves, skin, eyes and lining of nose.

(d) The incubation period of this disease is 02-10 years.

(e) With early diagnosis and treatment, the disease can be cured.

8. We have also noted that as per the details in IMB and countersigned by the applicant, the disease has first started on 25.10.1997 i.e. within 02 months of enrolment as a recruit. Hence, considering the evidence in totality, we agree with the findings of IMB i.e. that the disease is not connected with service and that it pre existed before enrolment. We are convinced that as per medical evidence on progression of this disease, it cannot originate in 02 months, hence we find no valid reasons to interfere with the findings of IMB.

9. Additionally we feel that a recruit is akin to a probationer and respondents have every right to reject a trainee, who is not meeting the requirements of physical fitness.

10. Apart from it, in identical factual background Co-ordinate Bench of this Tribunal dismissed T.A. No. 1462/2010 vide order dated 23.05.2011 wherein the applicant was enrolled on 21.01.2000 and was discharged on 27.04.2010 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.

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

(Air Marshal B.B.P. Sinha)  
Member (A)

(Justice S.V.S.Rathore)  
Member (J)

Dated: April, 2019  
PKG