

RESERVED

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)**

Original Application No. 524 of 2018

Friday, this the 16th day of August 2019

Hon'ble Mr. Justice Virender Singh, Chairperson
Hon'ble Air Marshal B.B.P. Sinha, Member (A)

Ex. Sigm. No. 15683777W Kailash Joshi, S/o Mahesh Kumar Joshi, R/o Village Nalkana, Post Office Danya District Almora, Uttarakhand-263601.

..... Applicant

Ld. Counsel for the Applicant: **Shri Kishore Rai,**
Advocate

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-110001.
2. P.C.D.A. (P), Allahabad, Uttar Pradesh.
3. Senior Record Officer, The Records Signals, PIN 908770 C/o 56 APO.

..... Respondents

Ld. Counsel for the
Respondents

:Mrs. Pushpa Bhatt,
Central Govt Counsel.

ORDER**“Per Hon’ble Air Marshal B.B.P. 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. A direction to quash the order dated 15.04.2013 passed by respondent no. 3 (contained as Annexure No. 3 to this original application) or to*
- i. A direction to grant disability pension to the applicant from the date of discharge on medical grounds w.e.f. 26.03.2012 as per pension rules.*
- iii. To summon the entire records of the applicant pertaining to computation of his disability pension.*
- iv. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.”*

2. Brief facts of the case are that the applicant was enrolled in Army on 10.03.2003 as a Signaller. The applicant was invalided out from service on 27.03.2012 in low Medical Category under Rule 13(3) III (iii) of the Army Rules, 1954. At the time of invalidment from service, the Invaliding Medical Board (RMB) held at Military Hospital, Bareilly on 11.02.2012 assessed his disability **‘ALCOHOL DEPENDENCE SYNDROME’** @1-5% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service and not connected with service due to habitual disorder. The

applicant approached the respondents for grant of disability pension which was rejected vide their letter dated 15.04.2013. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant pleaded that the applicant was enrolled in the Army on 10.03.2003 as a Signalman. He was found medically and physically fit for service and there is no note in the service documents that he was suffering from any disease at the time of entry in service. The applicant was invalided out from service on 27.03.2012 in low Medical Category on medical grounds for the disability '**ALCOHOL DEPENDENCE SYNDROME**'. Ld. Counsel for the applicant pleaded that the applicant was invalided out from service on the basis of Invaliding Medical Board (IMB) dated 11.02.2012.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @1-5% for life has been regarded as NANA by the RMB, hence applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the IMB proceedings as well as the records. The twin questions which needs to be answered by us are firstly whether the

disability of the applicant i.e. 'Alcohol Dependence Syndrome' is attributable to or aggravated by military service and secondly whether the disability percentage has been decided correctly?

6. We have given our thoughtful consideration to the issues raised by the learned counsel for the applicant. On careful analysis, we find that alcohol dependence syndrome is primarily a disease where an individual cannot control his excessive drinking habits. This disease leads to being drunk while on duty and poor performance during discharge of official duties. It is also very clear that drinking Alcohol and exercise of discipline and moderation while drinking is a matter of personal choice.

7. It is also well known that all efforts are made by military doctors and the organization to help a soldier who has become a victim of 'Alcohol Dependence Syndrome' and only when all efforts fail the soldier is invalided out on ground of 'Alcohol Dependence Syndrome'.

8. As far as attributability of the of disability is concerned, we agree with the opinion of the IMB that this disease is neither attributable to nor aggravated by military service. However, as far as disability percentage is concern, we would like to correct the disability percentage from 1- 5% to 20% in light of the Hon'ble Supreme Court Judgment in ***Sukhwinder Singh Vs. Union of India & Others***, reported in (2014) STPL (WEB) 468 SC. Para 9 of the judgment, being relevant is quoted below:-

*“9. 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 be 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 appears to be no provisions authorizing 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 is invalided out of service, it perforce has to be assumed 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.**”*

9. Considering all issues, we are of the considered opinion that Ld. Counsel for the applicant has failed to make out any case in his favour. We agree with the opinion of IMB that the disease of the applicant was neither attributable to nor aggravated by military service. Thus considering that due process has been followed by Army in invaliding the applicant out of service, we are not inclined to interfere with this process or provide any other relief to the applicant.

10. In view of the above, the **Original Application No 524 of 2018** deserves to be dismissed, hence **dismissed**.

No order as to costs.

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

(Justice Virender Singh)
Chairperson

Dated : 16 August, 2019

AKD/-