

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
CIRCUIT BENCH AT NAINITAL****ORIGINAL APPLICATION No. 158 of 2021**Tuesday, this the 03<sup>rd</sup> day of August, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 4185197 Ex Sep Arun Joshi, S/o Shekhar Chandra Joshi, R/o Village – Boharagaon, P.O.- Naukhuchiyatal, District Nainital, Presently Residing at Near Maa Durga Ayurvedic Medical Store, Near Mukhani Chauraha, Haldwani, District- Nainital.

..... Applicant

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

Versus

1. Union of India, Ministry of Defence, (Army), through its Secretary, South Block, New Delhi-110001.
2. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)-211014.
3. Chief of Army Staff, Integrated Headquarters, Ministry of Defence (Army), New Delhi – 110011.
4. Senior Record Officer, Records the Kumaun Regiments, Ranikhet, District- Almora.

.....Respondents

Ld. Counsel for the  
Respondents.

: **Shri Neeraj Upreti,**  
**Central Govt. Counsel**

**ORDER****“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

- (i). *A direction to quash the order dated 28.11.2009 passed by respondent no. 3 (contained as Annexure No. 6 to this Original Application) or to*
- (ii). *A direction to grant the disability pension to the applicant from the date of his retirement i.e. 12.03.1995.*
- (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. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 14.12.1992 and was discharged from service on 12.03.1995 under Rule 13 (3) III (iv) of the Army Rules, 1954 before completion of terms and conditions of enrolment at his own request on compassionate grounds. Medical Board (MB) held at the time of discharge assessed medical condition of his both eyes as 6/9. Claim of the applicant for grant of disability pension was rejected by the respondents vide letter dated 28.03.2009 stating that he is not entitled for any retirement benefits as he was discharged at his own request. It is in this perspective that the applicant has preferred the present Original Application for grant of disability pension.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that an individual is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time of entry. In the event of his subsequently being discharge from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. He pleaded that the applicant was posted in field area in Jammu & Kashmir where he felt pain in his eyes. He consulted medical authorities and was given goggles for bearing but his condition was deteriorated day by day and he was unable to see. In these circumstances his disability should be considered as attributable to and aggravated by military service. Ld. Counsel for the applicant, on account of aforesaid, pleaded for disability pension to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant was discharged on his own request after rendering only 02 years, 2 months and 29 days of service. MB has not given any disability and his medical condition was assessed as SHAPE-1, hence the applicant is not entitled to disability pension. He further accentuated that the applicant is not entitled to disability pension in terms of Rule 173 of Pensions Regulations for the Army, 1961 (Part-I), which stipulates that, "unless otherwise specifically provided, a disability pension 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, but in the instant case the disability of the applicant has been assessed as Nil and applicant was discharged from service on his own request in SHAPE-1, therefore, the applicant is not entitled to disability pension. Ld. Counsel for the respondents further submitted that claim for disability pension has rightly been rejected by the competent authority in view of para 198 of Pension Regulations for the Army, 1961 (Part-I), which categorically states that the minimum period of qualifying service actually rendered and required for grant of invalid pension is ten years, but in the instant case the applicant has put in only 02 years of service. He pleaded that in the facts and circumstances, as stated above, Original Application deserves to be dismissed.

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

6. On careful perusal of the medical documents, it has been observed that the applicant was enrolled in the army on 14.12.1992, and was discharged from service in Medical Category SHAPE-1, on his own request, hence he is not entitled for disability pension and other retiral benefits.

7. There is no provision to grant disability pension to a person discharged from service in medical category SHAPE-1.

Additionally, a Sepoy discharged in SHAPE-1 cannot be granted disability pension unless there are very valid reasons and strong medical evidence to dispute the opinion of Medical Board.

8. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

9. No order as to costs.

10. Pending applications, if any, are disposed of accordingly.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 03 August, 2021

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