

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

**Original Application No. 163 of 2021**

Tuesday, this the 3<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)**

4165131 Sep Bhim Dutt (Retd)  
S/o Jivanand,  
R/o Village – Nayakgoth, Near RTO Office,  
PO – Tanakpur, Tehsil – Shri Purnagiri,  
District – Champawat, Uttarakhand PIN – 262309

.... **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-110011.
2. PCDA (P) Allahabad, Uttar Pradesh.
3. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, New Delhi-110011.
4. Senior Record Officer, Records The Kumaon Regiment, PIN-900473, C/o 56 APO.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Rajesh Sharma**,  
Central Govt Counsel.

**ORDER**

1. The instant Original Application has been filed on behalf of the petitioner under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has sought following reliefs:-

- “i. A direction to quash the order dated 28.12.1973 passed by respondent no. 4 (contained as Annexure No. 2 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. 30.08.1973.
- 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 the Indian army on 24.08.1972 and was invalided out of service w.e.f. 30.08.1973 in low medical category 'EEE' under Army Rule 13(3) III (iii) due to disability **“BUBONOCELE (LT) EFFECTS OF 550”** assessed @ 6 -10% for life and considered it neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide order dated 07.12.1973. The petition dated 26.12.2020 preferred by the applicant was suitably replied by Records vide letter dated 05.01.2021 informing the reasons for non grant of disability pension. Being aggrieved, applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that a person 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 invalided out from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. The injury sustained by the applicant while performing PT parade which is clearly within the purview of military duty and the applicant is

deemed to be in bonafide military duty, hence the disability/injury sustained by the applicant is aggravated by or attributable to military service. In this regard, he submitted that for grant of disability pension the law is settled by the Hon'ble Apex Court in the case of ***Dharambir Singh vs Union of India & Others*** (2013) 7 SCC, 316 and ***Sukhvinder Singh vs. Union of India & Ors*** (Civil Appeal No. 5605 of 2010), decided on 25.06.2014 and pleaded for disability to be considered as attributable to or aggravated by military service. He also prayed for disability pension to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that disability of applicant has been assessed below 20% and is considered as neither attributable to nor aggravated by military service by the medical board. The applicant has also refused to undergo operation/treatment for his injury. Hence, in view of Rule 52 and 173 of Pension Regulation for the Army, 1961 (Part-1), he is not entitled for disability pension. He pleaded for dismissal of O.A.

5. We have heard learned counsel for both sides and perused the material placed on record.

6. On careful perusal of the records and medical documents, it has emerged that applicant was enrolled on 24.08.1972 and the disability/injury sustained by the applicant within a month during training period. After a detailed investigations by the medical authorities, applicant was not found fit to continue training in service and was recommended by the Invaliding Medical Board to be invalided out of service in medical category 'EEE'.

7. The applicant was invalidated out of service being low medical category 'EEE' as recommended by IMB. Further, the competent authority while adjudicating the disability pension claim of the applicant has also examined applicant's disability in the light of relevant rules and finally rejected being neither attributable to nor aggravated by military service and below 20%. We are in agreement with the opinion of IMB proceedings. Additionally, a recruit is akin to a probationer and hence prima facie the respondents as an employer have a right to discharge a recruit who is not meeting the medical requirement of military service. We are in agreement with the opinion of IMB that the applicant's disability is neither attributable to nor aggravated by military service and he is not entitled to disability pension.

8. Apart from it, in identical factual background this Tribunal dismissed T.A. No. 1462/2010, ***Bhartendu Kumar Dwivedi vs. Union of India and others***, vide order dated 23.05.2011 wherein applicant was enrolled on 21.01.2000 and was discharged on 27.04.2000 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 the Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 preferred against the aforesaid order, has been dismissed on delay as well as on merits vide order dated 20.11.2017.

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

10. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve)** **(Justice Umesh Chandra Srivastava)**  
Member (A) Member (J)

Dated: 3<sup>rd</sup> August, 2021

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