

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

Original Application No 69 of 2020

Thursday, this the 10th day of December 2020

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

No. 6487848Y Ex Recruit Krishan Bir Singh,
Son of Late Bijendra Singh, R/o Village &
Post : Ishara, District – Etah- 207121 (UP).

.....Applicant

Ld. Counsel for the: **Shri R Chandra, Advocate**
Applicant

Verses

1. Union of India, through the Secretary,
Ministry of Defence, Government of India,
New Delhi- 110011.
2. Chief of the Army Staff, Army Headquarters, DHQ Post
Office, New Delhi- 110011.
3. The Officer-In-Charge, ASC Records (AT),
Bangalore - 56007.
4. The Chief Controller Defence Account (P), Draupadid
Ghat, Allahabad-14 (UP).

.....Respondents

Ld. Counsel for the : **Dr. Chet Narain Singh,**
Respondents **Central Govt. Counsel**

ORDER

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

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has claimed the reliefs as under:-

“(i) The Hon’ble Tribunal may be pleased to set aside the order dated 23/04/2007 (Annexure No A-1).

(ii) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 17/03/2002 along with its arrears and interest thereon at the rate of 18% per annum.

(iii) Hon’ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 50 percent in terms of Ram Avtar’s case.

(iv) Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation. ”

2. The factual matrix of the case is that the applicant was enrolled in the Army against the vacancies under Unit HQ Quota enrollment on 28.02.1995 along with 401 candidates. Due to pseudonymous complaint alleging certain irregularities in the said enrollment, a Court of Inquiry was ordered with directions for settlement and early regularization of the irregularities committed during the enrollment. During medical

examination held on 24.01.2002, and Invaliding Medical Board held on 18.02.2002, applicant was found to be suffering from **“CUBITUS VALGUS BOTHERSIDES”**, thus UNFIT for re-enrollment. His disability was found to be neither attributable to nor aggravated by military services and assessed Nil percentage for life. Applicant was invalided out from service on 16.03.2002 (AN) under Army Rule 13 (3) III (iii) in low medical category S1H1A5(U)P1E1. He preferred appeal dated 22.05.2002 against discharge from service and requested for restoration in service which was rejected by the respondents vide order dated 03.06.2002. His claim for grant of disability pension was also rejected vide order dated 23.04.2007. Being aggrieved, the applicant has preferred the present O.A.

3. Learned Counsel for the applicant pleaded that since the applicant was enrolled in the army in medically fit condition and, after about 7 years service in peace/field area, he has been retired from service in Low Medical Category with disability **“CUBITUS VALGUS BOTHERSIDES”**, he is entitled for disability pension. He pleaded for the disability of the applicant to be considered as a result of stress and strain of military service. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such, the

applicant is also entitled to disability pension and its rounding off.

4. **Per Contra**, learned counsel for the respondents submitted that the applicant was enrolled in the army along with 401 other candidates by fraud. On complaint, to regularize the services of the candidates, a court of inquiry was ordered. A special board of officers was detailed to complete all the formalities i.e. carrying out educational verification, re-medical and domicile verification of all candidates for preparing fresh enrollment documents. In order to prepare fresh enrolment documents, re-medical examination of the applicant was carried out. He was found to be suffering from “**CUBITUS VALGUS BOTHERSIDES**”. He was referred to Military Hospital, Gaya and again to Base Hospital, Lucknow, for thorough check up by Senior Advisor (Surgical & Orthopedic). Medical Board declared the applicant a case of “**CUBITUS VALGUS BOTHERSIDES**”, downgraded the applicant in low medical category and declared unfit for re-enrolment and for holding Invalid Medical Board for further disposal. A duly constituted Invaliding Medical Board was held and applicant was physically examined by the medical board and invalidated out of service with effect from 16.03.2002 (AN). His disability was considered as neither attributable to nor aggravated by Military Service and disability was assessed Nil

for life. He submitted that since the medical board assessed the disability of the applicant as Nil for life and disability was found neither attributable to nor aggravated by military but **pre-existing disability and constitutional disorder**, hence the applicant was not granted disability pension. He was granted his credit balance Rs. 23,905/- and AGI Insurance Fund Rs. 12,909/-. Further submission of learned counsel for the respondents is that as per Para 173 of Pension Regulations for the Army 1961, the disability pension is payable to an individual whose disability is assessed either attributable to or aggravated by military service and is assessed at 20% or more by the medical authority. Since the disability of the applicant was regarded neither attributable to, nor aggravated by military service by Medical Board and applicant was assessed Nil percent, he was not granted disability pension. He pleaded that the O.A. be dismissed.

5. We have given our anxious thought to the material on record and the arguments by both the learned counsels. We are of the considered view that the applicant was not suffering from any disease but a deformity which was **pre-existing disability and constitutional in nature**. Hence to decide the attributability factor the only legal issue before us is that 'has the Invaliding Medical Board (IMB) given reasons as to why this

is deformity and not a disease. In this particular case, the applicant was checked thrice by various medical authorities, and finally IMB has given reasons as to why this is deformity, and we are satisfied with the same.

6. Army is a highly disciplined combatant force and medical fitness is a must for a soldier. Since the disability of the applicant is not a disease but a deformity which is a constitutional disorder, we by no stretch of imagination can make the same as attributable to or aggravated by military service.

7. A conceptuous of our observations made hereinabove is that the applicant has failed to make out a case in his favour for granting disability pension, hence we don't find anything wrong or illegal in the rejection of his disability pension.

8. As a result of above discussions O.A. lacks merit and deserves to be rejected.

9. Accordingly, the petition fails and is hereby **rejected**.

10. There shall be no order as to cost.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : December, 2020
Ukt/-