

Court No.3

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

TRANSFERRED APPLICATION NO 14 of 2015

Tuesday, this the 19th day of January 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

No. 15786487Y RECT (TECH) Shailesh Mishra, Son of
Parmatma Prasad Mishra, Resident of Village Batoli, Post
Dhiroli, District Basti.

...Petitioner

Ld. Counsel for the: **Shri O.P. Kushwaha, Advocate**
Petitioner

Versus

1. The Union of India through Ministry of Air Defence, New
Delhi.
2. Commanding Officer, Basic Training Regiment Army Air
Defence Centre, P.P. Nasik Road Camp-422102.
Maharashtra.

.....Respondents

Ld. Counsel for the : **Shri Ashish Saxena, Central**
Respondents. **Govt Counsel assisted by Lt Col**
Subodh Verma, OIC Legal Cell.

ORDER (ORAL)

1. Being aggrieved with the impugned order of discharge dated 25.01.2005 during course of Basic Military Training, a Civil Writ Petition No. 60878 of 2005 was filed by the petitioner in the High Court of Judicature at Allahabad which has been received by this Tribunal; under section 34 of the Armed Forces Tribunal Act and re-numbered as TA No. 14 of 2015.

2. Heard Ld. Counsels for the parties and perused the record.

3. The petitioner was recruited in the Indian Army on 16.06.2004 and later on discharged while during course of training on 24.03.2005. It is not disputed that the petitioner was enrolled in the Army in Medical Category shape –I. However, during course of training for the period i.e. 11 months and 5 days he got fracture in left leg. The petitioner, while undergoing the basic military training on account of injury sustained Fracture Tibia and Fibula, was admitted in Military Hospital, Devlali. After treatment in the Army Hospital the Doctor's opined that he cannot be permanently cured and his deformity shall continue to whole life, and recommended his invalidment from service. Today during the course of hearing we have asked one Lt. Col. Srinivasan to have a glance over the

movement of the applicant outside the court room. He reported that the petitioner is suffering from deformity on account of the fracture sustained during the course of training period. Thus it appears that the petitioner sustained injury or deformity on account of army service and his disability aggravated because of army service, hence, prima facie he is entitled for disability pension. A person suffering from Fracture Tibia and Fibula can not make out the requirement of the army. Accordingly the discharge order does not suffer from any illegality/arbitrariness. During course of hearing petitioner submitted that he has passed Laboratory Technician course and he may be considered for remustering in other trade according to his qualification. It is on the authorities to look into it.

4. Keeping in view the fact that petitioner suffered injuries during the course of military service for whole life, prima facie the petitioner is entitled for disability pension. However, matter should be considered by the competent authority.

5. We dispose of the T.A. finally with permission to petitioner to prefer a fresh representation along with copy of this order within one month. In case he prefers such representation, respondents shall consider the petitioner's case by passing a speaking and reasoned order expeditiously say within 6 months and communicate the decision to the petitioner.

6. It is clarified that we have not entered into the merit of the case. T.A. is disposed of accordingly.

No order as to cost.

(Air Marshal Anil Chopra)
Member (A)

anb

(Justice D.P. Singh)
Member (J)