

**RESERVED**  
**COURT NO 1**

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

**TRANSFERRED APPLICATION No. 40 OF 2009**

Thursday, this the 28<sup>th</sup> day of February 2019

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon’ble Air Marshal B.B.P. Sinha, Member (A)”**

Sushil Singh son of Sri Veer Pal Singh resident of Village-  
Aira, Post-Banda Khera, Distt-Unnao

.....Petitioner

Ld. Counsel for: **Shri Virat Anand Singh**, Advocate  
the Petitioner

Versus

1. Union of India through its Secretary Ministry of Defence, New Delhi.
2. Senior Record officer, Ministry of Defence (Pen & AC) Room No 207, 'A' Wing Sena Bhawan, New Delhi-110011.
3. Additional Directorate General (Personal Services), Adjutant General Branch (4D), Army Headquarters, HQ PO-New Delhi-11.
4. Abhilekh Bengal Abhiyanta Bengal Engineer Group Record, Roorkee-247667.

.....Respondents

Ld. Counsel for the : **Ms Appoli Srivastava**,  
Respondents. Central Govt Counsel.

**ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The petitioner had preferred Writ Petition bearing No. 2196 (S/S) of 2007 in the Hon’ble High Court of Judicature at Allahabad (Lucknow Bench, Lucknow) which has been transferred to this Tribunal in pursuance to powers conferred under Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 40 of 2009. The petitioner has sought the following reliefs:-

- (i) *Issue/pass an order or direction to the respondents to set-aside/quash the Discharge Certificate (Annexure No 4 to the writ petition) being arbitrary, capricious and per se illegal, and against the existing provisions on the subject.*
- (ii) *Issue/pass an order or direction to the respondents to reinstate the petitioner in service from 22.07.2000 with entitled pay and allowances and all other consequential benefits because of the fact that his medical category ‘EEE’, with the diagnosis:- CSOM (BIL) does not exist at all and that if the reason he was discharged from the Base Hospital, Delhi Cantt on at 18.00 hours on 21.01.2006 with the remark that the patient was fit for discharge and directed to go home and he remains fit even till todate.*
- (iii) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (iv) *Allow this application with costs.*

2. Brief facts of the case are that the petitioner was enrolled in the Indian Army on 24.01.2000 and invalided out of service after holding Invaliding Medical Board (IMB) at Military Hospital, Roorkee w.e.f. 23.07.2000 in low medical category ‘EEE’ having rendered only approx 06 months of service due to “CSOM (BIL)-382”. Disability pension claim of the petitioner was rejected vide order

dated 06.06.2002 and thereafter first and second appeals were also rejected vide orders dated 13.04.2004 and 17.08.2006 respectively. It is also submitted that the petitioner had undergone Re-survey Medical Board (RSMB) vide order dated 03.06.2005 which opined the petitioner to be suffering from invaliding disease prior to enrolment. Hence this O.A.

3. Ld. Counsel for the petitioner pleaded that Nk Kamal had slapped the petitioner during training period resulting in an injury in his ear followed by hospitalization for the period 16.06.2000 to 14.07.2000 and thereafter the petitioner was invalided out of service. It was further pleaded that a member 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. He pleaded that the disability of the petitioner is due to stress and strain of military service while undergoing basic military training and it should be accepted as attributable to military service. Relying upon Hon'ble Apex Court judgments in the cases of ***Dharamvir Singh vs UOI & Ors***, (2013) 7 SCC 316, ***Sukhvinder Singh vs***

**UOI & Ors**, (2014) STPL (WEB) 468 SCC, **Veer Pal Singh vs Ministry of Defence**, (2014) (32) Volume L.C.D. 17, the Ld. Counsel for the petitioner pleaded for disability pension to be granted to the petitioner.

4. On the other hand, Ld. Counsel for the respondents submitted that the petitioner's disability was detected within two months of enrolment therefore it may be presumed that the same was subsisting prior to enrolment. He further contended that since the Medical Board has opined the disability to be existing before enrolment, it cannot be termed as either attributable to or aggravated by military service. He further accentuated that the petitioner 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 though the disability of the petitioner has been assessed at 20% for life but NANA, therefore the petitioner is not entitled to disability pension. The Ld. Counsel for the respondents further submitted that the claim for disability pension, first and second appeals have

rightly been rejected. The Ld. Counsel for the respondents further contended that the petitioner, being aggrieved with the rejection of first appeal, had filed second appeal to the Appellate Authority who directed the petitioner to undergo RSMB vide order dated 03.06.2005 but the medical board again endorsed in their opinion that the disability was existing prior to enrolment. Therefore he pleaded the O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. It is submitted that during pendency of the second appeal, Re-survey Medical Board (RSMB) was conducted on the petitioner on 21.01.2006 in Base Hospital (BH), Delhi Cantt. During admission in the hospital, various tests were conducted on the petitioner and it was opined by the RSMB that the disability to which the petitioner suffered was existing prior to enrolment and therefore the disability is neither attributable to nor aggravated by military service.

6. On careful perusal of the medical documents, it has been observed that the petitioner was enrolled on 24.01.2000 and invalided out of service w.e.f. 23.07.2000. The medical records also reveal that the petitioner was detected to be suffering from the aforesaid

disability w.e.f. 10.03.2000 i.e. within two months of enrolment while undergoing basic military training which also strengthens the submission of the respondents that the petitioner was suffering from the disability 'CSOM (BIL)-382' prior to enrolment.

7. We have given our anxious considerations to the submission of both the counsels and arrived at a conclusion that since two medical boards i.e. IMB and RSMB both have opined that the invaliding disease existed prior to enrolment. Therefore we are inclined to agree with the opinion of the two medical boards that the disability is neither attributable to nor aggravated by military service (NANA). Additionally, in medical terms the disability Chronic Suppurative Otitis Media (CSOM) is a chronic inflammation of the middle ear and mastoid cavity, therefore it cannot develop within a short period of time of 02 months from enrolment as claimed by Ld. Counsel for the petitioner. 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. In view of the foregoing, we are in agreement with the opinion of initial medical board (IMB) and the subsequent Review Medical Board (RSMB) that the petitioner was

suffering from "CSOM (BIL)-382" prior to enrolment and thus the disability cannot be accepted as attributable to or aggravated by military service.

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

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice S.V.S. Rathore)**  
**Member (J)**

Dated: February 2018  
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