

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 127 of 2018**Thursday, this the 21st day of January, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Santosh Kumar Singh (No. 13984494N Ex Sepoy/AA)
Son of Late Haridwar Singh
Permanent Resident of Village Rajla, Post Office – Niyar
District – Varanasi (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Yashpal Singh**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110001.
2. Officer-in-Charge Records, Army Medical Corps, Cantonment, Lucknow.
3. Commanding Officer, No. 2 Technical Training Battalion, Army Medical Corps Centre and College, Cantonment, Lucknow.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
Central Govt Counsel.**ORDER**

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

“(a) Issue/pass an order or direction setting aside the recommendations of the Release Medical Board dated 23.07.2001 insofar as the same hold the disability of the applicant neither attributable to nor aggravated by the Army

service, and the order denying disability pension and other benefits to the applicant, after summoning the relevant original records.

(b) Issuing/passing of an order directing the respondents to consider case of the applicant for grant of disability pension and provide the same from the date of discharge, i.e. 28.07.2001 including arrears and interest, and also the benefit of rounding off and other consequential benefits of ex-serviceman.

(c) Issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit under the circumstances of the case.

(d) Allowing this Original Application with cost.”

2. The facts of the case, in brief, are that applicant was enrolled in the Army medical Corps of Indian Army on 29.02.1992 and was discharged from service on 27.07.2001 (AN) as undesirable soldier under Rule 13(3) III (v) of Army Rule 1954 after rendering 08 years, 11 months and 11 days service (Excluding 167 days non qualifying service) in terms of Army Headquarters letter No. A/13210/159/AG/PS2 (C) dated 28.12.1988. The Release Medical Board (RMB) assessed his disability “**ALCOHOL DEPENDENCE SYNDROME**” @ 20% for two years and opined that disability of the applicant was neither attributable to nor aggravated by military service (NANA). The applicant submitted several applications to the respondents but no reply was given to the applicant. The last application submitted by the applicant on 06.02.2017. The applicant was replied vide letter dated 10.04.2017 annexing therewith copy of medical board proceedings that ‘you have been discharged as an

undesirable soldier and no pension has been granted to you'. Being aggrieved, the instant Original Application has been filed.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the service and any disability not recorded at the time of enrolment should be presumed to have been caused subsequently while in service. The action of the respondents in not granting disability pension to the applicant is illegal, therefore, the disability of the applicant is to be considered as aggravated by service and he is entitled to get disability pension @ 20% alongwith benefit of rounding off.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that applicant had been awarded 7 red ink entries and 1 black ink entry during his short span of approx 09 years of service. In spite of repeated counselling and advises given by his superiors, the applicant did not show any improvement and committed offences repeatedly disregard to military discipline and proved himself as an undesirable and inefficient soldier. His repeated offences had vitiated the environment and had sent an improper message to the rank and files in the Army. Accordingly, the applicant was discharged from service on administrative ground as an undesirable soldier under the provisions of Rule 13 (3) III (v) of Army Rule 1954 and Integrated HQ of MoD (Army) letter No A/1321/150/AG/PS-2(c) dated 28.12.1988 after obtaining sanction of the competent authority. Therefore, the competent authority has rightly denied the benefit of disability pension to applicant. He pleaded for dismissal of O.A.

5. Learned counsel for the respondents further submitted that :-

- (a) Rule 132 of pension Regulation for the Army 1961 (Part-1) stipulates that **“Unless otherwise provided for, the minimum qualifying colour service for earning a service pension is 15 years”** whereas in the instant case, the applicant had rendered only 08 years, 11 months and 11 days service, hence he is not entitled for service pension.
- (b) As per Integrated Headquarters of MoD (Army) letter No. B/40502/Appeal/05/AG/PS-4(Imp-II) dated 18.08.2005 **“where the individual has been discharged from service at his own request or discharged locally being undesirable on administrative ground will not be adjudicated nor will any appeal lie against non grant of disability pension. They may be informed accordingly”**. In the instant case, the applicant was discharged from service being an ‘undesirable soldier’, hence the applicant is not eligible for disability pension.
- (c) Rule 173 of Pension Regulations for the Army 1961 (Part-1) stipulates that **“Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 percent or over”**. In the instant case, RMB had viewed disability “ALCOHOL DEPENDENCE SYNDROME” as neither attributable to nor aggravated by military service (NANA), hence applicant is not entitled for disability pension.

6. Learned counsel for the respondents further relied upon judgment on similar grounds passed by the Hon’ble Supreme Court in SLP (C) No. 23727/2008 in case of **UOI vs. Damodaran AV** in which it is viewed that **“the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence”**.

In another judgment on similar grounds passed by the Hon'ble High Court of Kerala at Ernakulam in WA No. 1071 of 1997 (OP No. 18002 of 1993) in case of **UOI vs. Sreekumar P**, the Hon'ble Court has viewed that :-

(a) *“the disability has been assessed by a competent expert body like the medical board whose conclusions are to be accepted as correct unless contradicted by any other medical board by cogent evidence”.*

(b) *“Once the expert body like the medical Board expresses an opinion it is entitled to great weight. Unless the medical findings are utterly perverse this Court exercising jurisdiction under Article 226 of the Constitution cannot go behind the said opinion and substitute its own opinion for that of the expert body”.*

(c) *“This court while exercising jurisdiction under Article 226 of the Constitution is not sitting as an Appellate Court. The findings of the expert body cannot be interfered with unless it is palpably wrong”.*

7. AFT (RB) Jaipur in its order dated 17.05.2012 in O.A. No. 104/2011, Ex Sep Umrao Singh vs. Union of India and others has viewed that ***“in the instant case, the Release Medical Board has concurrently held that the disability suffered by the applicant is neither attributable to nor aggravated by military service and there is nothing on record, which establishes that the disability suffered by the applicant is either attributable to or aggravated by military service. In view of the matter, this application lacks merit and deserves to be dismissed”.***

8. We have given our considerable thoughts to both sides and have carefully perused the records.

9. As per Rule 173 of Pension Regulations for the Army, 1961 (Part-1), disability pension is eligible only when the disability is assessed @ 20% or more and accepted as attributable to or

aggravated by military service. Since, applicant's disability is considered as neither attributable to nor aggravated by military service (NANA) by RMB, applicant does not fulfil the requirement of Rule 173 of Pension Regulations for the Army, 1961 (Part-1) for grant of disability pension. It is also pertinent to mentioned here that since, the applicant was not in receipt of disability pension, the question of grant of benefit of rounding off of disability pension does not arise as averred by the applicant in Original Application.

10. In light of the above judgments of the Hon'ble Apex Court in the case of ***UOI vs. Damodaran AV (supra) and UOI vs. Sreekumar P (supra) and AFT (RB) Jaipur order in the case of Ex Sep Umrao Singh vs. Union of India & Ors (supra)***, inference may be drawn that Medical Board is a duly constituted body and findings of the board should be given due credence. Hence, the applicant is not entitled for disability pension.

11. In view of the above, the applicant has failed to make out a case for himself. O.A. lacks merit and same is accordingly **dismissed**.

12. No order as to costs.

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

Dated: January, 2021

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