

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Transferred Application No. 12 of 2014**Thursday, this the 03rd day of December, 2020**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Ex MER No. 135966-R Sumont Gupta son Shri Lolarok, resident
of village-Madhapur, P.O.-Dabaria, District-Chandaulu (UP).**.... Petitioner**Ld. Counsel for the: **Shri R Chandra**, Advocate.
Petitioner

Versus

1. Union of India through its Secretary Ministry of Defence,
South Block New Delhi-110011.
2. Chief of the Naval Staff Navy Bhawan, New Delhi-11.
3. The Commandence Bureau of Sailors, Cheeta Camp,
Monkhord, Mumbai-400088.
4. P.C.D.A. (P) Allahabad (UP)/C.D.A. (N) Mumbai.
5. The Commanding Officer INS Chilka District Khurd, Orisa-
752037.

... RespondentsLd. Counsel for the: **Shri Namit Sharma**, Advocate
Respondents. Assisted by **Maj Sini Thomas**,
Departmental Representative

ORDER (Oral)

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) To issue a writ order or direction in the nature of mandamus directing the respondents to consider the disability claim and also to provide Medical Board Proceedings.*
- (II) To issue a writ order or direction in the nature of mandamus directing the respondents to decide the representation dated 04.09.2006 at the earliest.*
- (III) Any other writ order or direction which this Hon'ble Court may deem fit and proper in the present circumstances of the case.*
- (IV) Award the cost of the writ petition.*

2. At the very outset it may be observed that C.W.P. No 64945 of 2006 was filed in Hon'ble High Court of Allahabad which on transfer to this Tribunal has been registered as T.A. No. 12 of 2014.

3. Brief facts of the case are that the petitioner was enrolled in the Indian Navy on 30.01.2003 and was invalided out of service w.e.f. 26.07.2003. After enrolment the recruit was sent to INS Chilka for training where, as per policy in vogue, special medical examination was conducted on same day i.e. 05.02.2003 in which he was found to be suffering from '*Bicuspid Aortic Valve-Moderate AP*'. He was admitted to INS

Nivarini (Naval Hospital) and thereafter transferred to Command Hospital (Eastern Command) for special medical examination. Invaliding Medical Board (IMB) was conducted on petitioner which recommended him to be invalided out of service in medical category S5A5. The petitioner was accordingly invalided out of service. The duly constituted IMB assessed his disability @ 40% for life neither attributable to nor aggravated by military service (NANA) with an endorsement that the '*disability existed before entering service*'. Disability pension claim was rejected vide order dated 24.05.2004 on the grounds of NANA. Appeal dated 04.09.2004 against rejection of disability pension claim seems to be pending.

4. Learned counsel for the petitioner submitted that petitioner was enrolled in the Navy in a medically and physically fit condition and there was no note in his service documents with regard to suffering from any disability prior to enrolment, therefore any disability detected/suffered after joining the service, should be attributable to military service and petitioner is entitled to grant of disability pension.

5. On the other hand, learned counsel for the respondents contended that since the petitioner's disability is neither attributable to nor aggravated by

military service, hence his claim has rightly been rejected by the competent authority. It was also submitted that the petitioner's disability was detected on same day by a medical board wherein it was held that the disability suffered by petitioner was existing prior to his enrolment meaning thereby his disability is a congenital (by birth) and constitutional in nature and not related to the service. Hence he is not entitled to disability pension. He pleaded for O.A. to be dismissed.

6. After perusing the IMB and the opinion of Lt Col Harminder Singh, Classified Medical Specialist and Cardiologist Command Hospital, Eastern Command, we are absolutely clear about the following facts:-

(a) That petitioner as a recruit was detected to be suffering from aforesaid disability on the same day he reported for training i.e. on 05.02.2003. He was admitted to INS Nivarini (Naval Hosp) from where he was transferred to Command Hospital for special investigation by medical experts.

(b) The above mentioned specialist doctor i.e. Lt Col Harminder Singh who examined and treated him diagnosed petitioner to be a case of '*Bicuspid Aortic Valve-Moderate AP*' and recommended him to be

invalided out of service being unfit to undergo training.

(c) Accordingly petitioner was invalided out of service w.e.f. 26.07.2003 on recommendations of duly constituted Invaliding Medical Board.

7. In the above scenario we find that the IMB has given '*Bicuspid Aortic Valve-Moderate AP*' as the disability of soldier to be 'congenital' and NANA. We are in agreement with the opinion of the IMB in declaring the disability as NANA since it was detected on the very day of start of basic military training.

8. Additionally, the petitioner (a recruit) was sent for training and he was not even attested. Thus, the status of petitioner as a recruit was akin to a probationer. Law is settled on the point that a probationer can be discharged from service at any point of time by his employer. Thus the respondents as an employer had every right to remove a recruit who could not undertake the rigours of military training and was not likely to meet the fitness standards required from a soldier.

9. We have also noted that medical check-up of recruits at the time of enrolment is done in outdoor locations across the country and in remote areas, which

may not have required facilities for a proper and detailed medical check-up to detect constitutional and congenital disabilities. However in this case another medical was also done on 05.02.2003 on the day the recruit reported to INS Chilka where ailment was detected. Hence we are satisfied that this ailment which could not be detected at the time of enrolment medical board was detected at the time of joining.

10. Navy is a combatant force and medical fitness is a must for a recruit. The nation cannot afford to have unfit soldiers to continue in training as a recruit and become a soldier merely because their constitutional or congenital disabilities could not be detected at outdoor recruit rallies. Thus the petitioner has failed to make out a case and T.A. is likely to be dismissed.

11. As a result of above discussions, the T.A. lacks merit and deserves to be dismissed. Accordingly, T.A. is **dismissed.**

12. No order as to cost.

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

Dated: 03 December, 2020

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