

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION No. 12 of 2022

Thursday, this the 19th day of January, 2023

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

“Hon’ble Maj. Gen Sanjay Singh, Member (A)”

No.15822132F, Ex. Rect. Pawan Kumar Kharwar, C/o Somnath Prasad, 15/1/1 Betra, Musalman Para, P.O. - Howrah, District – Howrah, West Bengal -711101.

..... **Applicant**

Ld. Counsel for : **Shri Om Prakash**, Advocate.
the applicant

Versus

1. The Union of India, through Secretary, Ministry of Defence, South Block, D.HQ P.O., New Delhi -110011.
2. The Chief of the Army Staff, through Adjutant General, Integrated HQ of MoD (Army), South Block, DHQ PO, New Delhi -110011.
3. The Officer –in Charge, Army Ordnance Corps Records, PIN -900453 C/o 56APO.
4. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad -211014.
5. The Managing Director, Army Group Insurance Fund, AGI Bhawan, Rao Tula Ram Marg, Post Bag No.14, New Delhi - 110057.

.....**Respondents**

Ld. Counsel for the: **Ms. Amrita Chakraborty**, Advocate
Respondents. Central Govt Counsel.

ORDER

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

1. The instant application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, before the Armed Forces Tribunal, Regional Bench, Kolkata, which has been transferred to this Tribunal and has been renumbered as Transferred Application No. 12 of 2022, for the following reliefs:-

- A. *Quash and set aside AOC Records letter no. C/15822132/DP-1 dated 31 May 2018 whereby the disability Pension claim of the applicant was rejected without application of mind and without assigning any valid reason as this is a clear case of total non application of mind, discrimination against the applicant, violation of Article 14 & 21 of the Constitution and desecration of the principles of service jurisprudence and natural justice.*
- B. *Issue directions to Respondent No.1 to grant Disability Pension as admissible to the applicant, since the date of discharge, that is 16 Nov 2015, including arrears along with 12% interest.*
- C. *Issue directions to Respondent no.1 to grant rounding benefit to the applicant.*
- D. *Issue directions to Respondent No. 5 to pay Rs. 6,25,000/- to the applicant as the applicant has been invalided out of service with 20% disability for life which is to be rounded of to 50% as per GOI, MOD Order dated 23 Jan 2018.*
- E. *Issue directions to Respondents No.3 to produce the following records before this Hon’ble Tribunal :-*
 - (i) *Record of service of the applicant.*
 - (ii) *Record of all medical hospital admission, discharge, and categorisation and release medical board proceedings.*
- F. *Pass such other and further orders/directions as may be deemed just and proper by the Hon’ble Armed Forces Tribunal in the attendant genuine circumstances of the case.*

2. The brief facts of the case are that the applicant was enrolled in the Army Ordnance Corps of Indian Army on 11.06.2014 and invalided out from service with effect from 16.11.2015 in Low Medical Category under Rule 13 (3) (iv) of the Army Rules, 1954 on having been found medically unfit. At the time of invalidation, Invaliding Medical Board (IMB) held at Military Hospital, Jabalpur on 12.08.2015 assessed his disability '**HYPOPLASTIC (RT) KIDNEY**' @ 20% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 31.05.2018. The applicant preferred First Appeal dated 28.09.2018 but of no avail. It is in this perspective that the applicant has preferred the present Transferred Application.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that an individual 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. The Ld. Counsel for the applicant, on account of aforesaid, pleaded for disability pension to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that since the IMB has opined the disability as NANA, the applicant is not entitled to disability pension. He further accentuated that the applicant is not entitled to disability pension in terms of Regulation 173 of Pension Regulations for the Army, 1961 (Part-I) revised by Regulation 53 of the Pension Regulations for the Army, 2008 (Part-I), which stipulates *that, "Unless otherwise specifically provided a disability pension consisting of service element and disability element 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 in non-battle casualty and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."* Accordingly, the applicant was informed about the rejection/non-entitlement of disability pension. The Ld. Counsel for the respondents further submitted that claim for disability pension has rightly been rejected by the competent authority in view of Regulation 198 of Pension Regulations for the Army, 1961 (Part-I), which categorically states that the minimum period of qualifying service actually rendered and required for grant of service element of disability pension/invalid pension is ten years, but in the instant case the applicant has put in only 01 year, 05 months and 05 days of service. He pleaded that in the

facts and circumstances, as stated above, Original Application deserves to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. On careful perusal of the documents, it has been observed that the applicant was enrolled on 11.06.2014, and the disease applicant was found to be suffering with in medical test first started on 30.04.2015, i.e. within eleven months of joining the service. We further observed that the disease of the applicant is a congenital disease as per Specialist opinion. Further, at page 5 of the IMB proceeding (page 18 of the Counter Affidavit) in reply to the question *"In case the disability existed at the time of entry, is it possible that it could not be detected during the routine medical examination carried out at the time of entry?"* the IMB has answered that *"Yes, as usg not part of initial med exams"*.

7. In the above scenario, we are of the opinion that since the disease has started in less than eleven months of his enrolment, hence by no stretch of imagination, it can be concluded that it has been caused by stress and strains of military service. Additionally, it is well known that congenital disease can escape detection at the time of enrolment as no ultrasound are being done at the time of initial medical examinations, hence benefit of

doubt cannot be given to the applicant merely on the ground that the disease could not be detected at the time of enrolment. Since there is no causal connection between the disease and military service, we are in agreement with the opinion of the IMB that the disease is NANA. In view of the foregoing and the fact that the disease manifested in less than eleven months of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.

8. Apart from above, in Civil Appeal No 7672 of 2019 in **Ex Cfn Narsingh Yadav vs Union of India &Ors**, decided on 03.10.2019, it has been held by the Hon'ble Supreme Court that though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. Relevant part of the aforesaid judgment as given in para 21 is as below :-

"21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The Invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the Invaliding Medical Board."

9. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

11. Pending applications, if any, are disposed of accordingly.

(Maj. Gen Sanjay Singh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 19 January 2023.

AKD/Ashok/-