

**RESERVED
Court No. 1**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 28 of 2017

Friday, this the 27th day of April, 2018

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

Manoj Kumar Pandey (No 15397962W) (Ex Recruit), S/O late Shri Brinda Pandey, R/O Village- Nasirabad Kala, Post – Nasirabad Kala, District – Mau, (U.P.)

..... Applicant

Ld. Counsel for the: **R. Chandra**, Advocate
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office New Delhi- 110011
3. The Officer In-charge, Signal Records, Jabalpur (MP)
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad, U.P.

.....Respondents

Ld. Counsel for the: **Shri Sunil Sharma**, Advocate
Respondents. Counsel for the respondents, assisted by
Maj Salen Xaxa, OIC Legal Cell.

ORDER

“(Per Hon Air Marshal BBP Sinha, Member (A))”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension. He is challenging the validity of findings of the Invaliding Medical Board holding

the disability of the applicant as neither attributable nor aggravated by military service.

2. For ready reference the prayers made by the applicant in the instant petition are reproduced hereunder:-

“(i) The Hon’ble Tribunal may be pleased to set aside findings of Invaliding Medical Board which has accepted the disability of applicant as neither attributable nor aggravated by military service (Annexure No.A-1.

(ii) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 04/01/1997 (date of Invaliding Out) along with its arrears and interest thereon at the rate of 18% per annum.

(iii) Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.”

3. The brief facts of the case are that the applicant was enrolled in the Indian Army on 01.05.1996 in Corps of Signal and was invalided out from service on 04.01.1997 in low medical category ‘EEE’ under Army Rule 13(3)III(iii) due to the disability of ‘GROSS DEFORMITY CHEST (RT) – 733’. At the time of invalidation he had rendered a total of 08 months and 03 days of service in the Army as a recruit. The Medical Board assessed the disability of the applicant as 20% (permanent) i.e. for life but it was assessed as neither attributable to nor aggravated by Military service. According to the applicant he also preferred an appeal for disability pension on 17.09.2014 against his invalidation out from service on the aforesaid medical grounds and according to the applicant the same has not been decided by the respondents.

4. Per contra the respondents have filed the counter affidavit denying the claim of the applicant. It has been pleaded by the respondents that the applicant was invalided out of service in low medical category ‘EEE’ under

Army Rule 13 (3) Item (iv) due to the disability of 'GROSS DEFORMITY CHEST (RT) – 733' by a duly constituted Invaliding Medical Board and the Board opined that the disability is neither attributable to nor aggravated (NANA) by military service as the disability is a constitutional disorder. According to the respondents the above fact was communicated to the applicant by Signals Records vide letter dated 26.09.2014, copy of which has been annexed as Annexure No.CA-2 to the counter affidavit. It has also been stated by the respondents that the applicant preferred an application for grant of disability pension dated 17.09.2014 after a gap of 17 years, which was suitably replied to vide Signals Records letter dated 26.09.2014, copy of which has been annexed as Annexure No.CA-3 to the counter affidavit. It has also been stated by the respondents that the applicant was brought before a duly constituted Invaliding Medical Board held on 17.12.1996 at Military Hospital Jabalpur, wherein he was physically examined and his disability viz 'GROSS DEFORMITY CHEST (RT) – 733' was opined as neither attributable to nor aggravated by military service and not connected with military service as the same was a constitutional disorder.

5. We have given our anxious thought to the material on record and the arguments by both the Ld. Counsels. We are of the considered view that the applicant was not suffering from any disease but a deformity of the chest which was constitutional in nature. Hence to decide the attributability factor the only legal issue before us is that has the Invaliding Medical Board (IMB) given reasons as to why this deformity could not be detected at the time of enrolment. In this particular case we have found that the IMB has given reasons as to why this deformity could not be detected at the time of enrolment and we are satisfied with the same.

6. Army is a combatant force and medical fitness at the time of recruitment is a must for a recruit. Since the disability of the applicant is not a disease but a deformity which is a constitutional disorder we by no stretch of imagination can make the same as attributable to or aggravated by military service.

7. As a result of above discussions O.A. lacks merit and deserves to be rejected.

8. Accordingly, the petition fails and is hereby **rejected**.

9. There shall be no order as to cost.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: April 27, 2018
JPT/-