

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 81 of 2021**Thursday, this the 25<sup>th</sup> day of November, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 23002167A Ex. Rect. Brijesh Kumar, S/o Ramashankar Yadav, R/o Village – Barthara Khurd, Post – Barthara Khurd, District Varanasi, Pin-221101 (UP).

..... Applicant

Ld. Counsel for the : **Shri Shiv Kumar Saroj**, Advocate.  
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, COAS Sectt., Integrated HQ of MoD (Army), South Block, New Delhi-110001.
3. The Commandant, AAD Regiment Centre, HQ AAD College, Gopalpur, District – Ganjam, Pin-908801, Orissa.
4. Officer-in-Charge, Army Air Defence Records, Pin-908801, C/o 99 APO.
5. Commanding Officer, ATR, AAD Regt. Centre, Gopalpur, District Ganjam, Pin-908801, C/o 56 APO.
6. PCDA (Pension), Draupadighat, Allahabad (UP).
7. The Commanding Officer, Military Hospital, Gopalpur, Orissa.

**.....Respondents**Ld. Counsel for the : **Shri Devesh Kumar**, Advocate  
Respondents. Central Govt. Counsel

**ORDER**

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

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

- A. To issue/pass an order or directions to set-aside/quash the illegal rejection Order passed by Army Air Defence Records vide their letter No. AAD/23002167A/DP/Pen Gp Dated 06.05.2020, in which the applicant has been unjustly denied for 20% Disability element of disability Pension approved by the Invalided Medical Board.
- B. To issue/pass an order or directions to the respondents to grant disability element of disability pension @20% to the applicant, and benefits of Rounding of/Broad banding of disability pension @20% to @50% with interest @18% p.a. on arrears, based on relevant Policy letters and Judgment passed by the Hon’ble Apex Court, Armed Forces Tribunal in similar cases time to time from the date of Invalided Out from service wef 02.12.2019 (AN).
- C. To issue/pass an order or directions to the respondents to provide the applicant best possible medical treatment facilities available in the Army at free of cost to save his life and destitute family of only earning member.
- D. To issue/pass any other order or directions as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- E. To allow this original application with costs.

2. Briefly stated facts of the case are that applicant was enrolled in the Army Air Defence Regiment of Indian Army on 17.09.2018 and was invalided out from service on

02.12.2019 (AN) in Low Medical Category after rendering 01 year, 03 months and 15 days of service under Rule 13 (3) Item IV of the Army Rules, 1954. At the time of invaliding from service, the Invaliding Medical Board (IMB) held at Military Hospital, Gopalpur on 12.10.2019 assessed his disability '**IMMUNE SURVEILLANCE (ICD NO. B20)**' @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 24.04.2003 which was communicated to the applicant vide letter dated 06.05.2020. It is in this perspective that the applicant has preferred the present Original 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), 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 element. 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 173 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 invalid pension is ten years, but in the instant case the applicant has put in only 01 year, 03 months and 15 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 17.09.2018, and the disease applicant was found to be suffering with in medical test first started on 06.07.2019, i.e. within one year of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than one year 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 **'IMMUNE SURVEILLANCE'** (HIV) can escape detection at the time of enrolment, 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. Additionally, a recruit is akin to a probationer and hence, prima facie the respondents as an employer have every right to discharge a recruit who is not meeting the medical requirement of military service and is not likely to become a good soldier. In view of the foregoing and the fact that the disease manifested in less than one year of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.

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

8. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 25 November, 2021

AKD/-