

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1095 of 2023**Thursday, this the 09th day of November, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

Service No. 13769763-N Ex. Rect. Bolke Vijay Motiram S/o Shri Motiram, resident of Village Manbha, Post – Karanja Lal, District Washim, Maharashtra.

..... Applicant

Ld. Counsel for the Applicant : **Shri Nand Kishore**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Chief of the Army Staff, Integrated Head Qarters of Ministry of Defence (Army), South Block, DHQ PO, New Delhi.
3. The Record Officer for Officer Incharge Record Jammu & Kashmir Rifles, Jabalpur, Madhya Pradesh. .
4. The Chief Controller of Defence Accounts (Pension), Draupadighat, Allahabad at now Prayagraj.

.....Respondents

Ld. Counsel for the Respondents. : **Ms. Deepti Prasad Bajpai**, Advocate
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, 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) *The Hon’ble Tribunal may kindly be pleased to quash the impugned order dated 18.09.2004 and 13.04.2021 passed by the opposite party No. 3 contained as Annexure No. 1 & 2 of this O.A..*
- (b) *The Hon’ble Tribunal may kindly be pleased to pass an order for directing the opposite party No. 4 to sanction PPO in favour of the applicant during pendency of O.A..*
- (c) *Hon’ble Tribunal may kindly be pleased to direct the opposite parties to pass appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the facts and circumstances of the case.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army (JAK RIF Regiment) on 21.12.2002 and was invalided out from service on 04.11.2003 in Low Medical Category under Rule 13 (3) Item IV of the Army Rules, 1954 after rendering 10 months and 12 days of service. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at

Military Hospital, Jabalpur on 01.10.2003 assessed his disability '**SCOLIOSIS OF LUMBAR SPINE M.41**' @11-14% for two years 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 09.09.2004 which was communicated to the applicant vide letter dated 18.09.2004. The applicant preferred application dated 04.03.2015 which too was rejected vide letter dated 15.11.2015. The applicant again preferred application dated 20.03.2021 which too was rejected vide letter dated 13.04.2021. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant submitted 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. He further submitted that applicant was injured by way training period on

29.06.2003. 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 disabilities as NANA, the applicant is not entitled to disability pension. While undergoing military training applicant was detected to have abnormal Curvature spine during screening of recruits for chicken pox on 03.06.2003. Therefore, he was referred to Surgical OPD of Military Hospital, Jabalpur for further management. He was diagnosed to be a case of **'SCOLIOSIS OF LUMBAR SPINE M.41'** and further transferred to Command Hospital, Central Command, Lucknow for opinion of Senior Advisor, Orthopaedics who after examination found that he has unacceptable degree of aforesaid disability. The applicant on being invalided out from service was paid Terminal Credit Balance of Rs.3,924/-, Regular Maturity Benefit under AGIF Scheme Rs.3,077/- and Invalid Gratuity Rs.3,880/-. She 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 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 10 months and 12 days of service. She 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 21.12.2002, and the disease applicant was found to be suffering with in medical test first started in the year 2003 i.e. within one year from the date of enrolment. Further, the IMB has opined that the disability as "pre-existing disability".

7. In the above scenario, we are of the opinion that since the disease has started within one years from the date of enrolment, hence by no stretch of imagination, it can be concluded that it has been caused by stress and strains of military service. It is well known that some disease 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 within

one year of enrolment with reason/Cause "Pre-existing disability", we are in agreement with the opinion of IMB that the disease is NANA.

8. Additionally, in Civil Appeal No 7672 of 2019 in **Ex Cfn Narsingh Yadav Vs Union of India & Ors**, decided on 03.10.2019, it has again been held by the Hon'ble Supreme Court that some diseases cannot be detected at the time of recruitment and their subsequent manifestation does not entitle a person for disability pension unless there are very valid reasons and strong medical evidence to dispute the opinion of 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.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 09 November, 2023

AKD/-