

E- Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 224 of 2020**Friday, this the 03rd day of September, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No 15423951K Ex Rect DMT Anil Kumar Tiwari, S/o Raj Bahadur Tiwari, Resident of Vill- Gorasara (Chaka), Post- Barauna Dih, Tehsil- Kadipur, Police Stn- Motigarpur, Pargana- Aldemau, Distt- Sultanpur (U.P.) 228145.

..... Applicant

Ld. Counsel for the: **Shri Shyam Bihari Tiwari, Advocate**
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), New Delhi-110011.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)-211014.
4. The Commanding Officer, AMC Records Office, Pin – 900450, C/o 56 APO.
5. Commanding Officer, No 1 Mil Trg Bn, AMC Centre & College, PIN- 900450, C/o 56 APO.

.....Respondents

Ld. Counsel for the
Respondents.

: **Shri Yogesh Kesarwani,**
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.

- (i) *To set aside/ quash the order of discharge invalided out from service w.e.f. 01 Feb 2006 (FN) under Army Rule 1954, Item 13 (3) IV as per IMB disability CAECAL VOLVULOUS (OPTD) as mentioned on discharge Book No 872 and AMC Records letter No 15423951K/Pen/DP corres dt 22 Jan 2020 on annexure A-1, 2, 5 Page 07, SL No 07 and 09.*
- (ii) *To direct the respondents to pay the disability pension of 20% rounded to 50% w.e.f. 01 Feb 2006 with simple interest @ 12% per annum on arrears to the applicant.*
- (iii) *To grant suitable and justified damages compensations from respondents to the applicant.*
- (iv) *To issue an order or direction that his Hon’ble Tribunal may deem fit and proper under the facts and the circumstances of the case, in favour of the applicant against the respondents.*
- (v) *To award the cost of petition to the applicant.*

2. Being a pensionary matter, delay in filing of Original Application is condoned.

3. Briefly stated facts of the case are that applicant was enrolled in Indian Army on 08.08.2005 and was invalided out

from service on 01.02.2006 in Low Medical Category 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 Command Hospital (Central Command), Lucknow on 03.01.2006 assessed his disability '**CAECAL VOLVULUS (OPTD)**' @ 20% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 25.05.2007. The applicant preferred First Appeal and Second Appeal which too were rejected vide letters dated 22.01.2020 and 02.03.2020 respectively. It is in this perspective that the applicant has preferred the present Original Application.

4. 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. He pleaded that the applicant was under stress and strains due to rigors of service conditions which may have led to occurrence of the disability.

He further stressed that the Invaliding Medical Board has also mentioned onset/origin of the disease during service/training, therefore, the disability should be accepted as attributable to military service. The Ld. Counsel for the applicant, on account of aforesaid, pleaded for disability pension to be granted to the applicant.

5. 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 Rule 173 of Pensions Regulations for the Army, 1961 (Part-I), which stipulates that, "unless otherwise specifically provided, a disability pension 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 and is assessed at 20% or over, but in the instant case the disability of the applicant has been assessed at 20% for life and NANA, therefore, the applicant is not entitled to 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 para 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 invalid pension is ten years, but in the instant case the applicant has put in only 07 months of service. He pleaded that in the facts and circumstances, as stated above, Original Application deserves to be dismissed.

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

7. On careful perusal of the medical documents, it has been observed that the applicant was enrolled on 08.08.2005, and the disease applicant was found to be suffering with in medical test first started on 09.10.2005, i.e. within one month of joining the service. He was administered treatment at Command Hospital, Lucknow. On admission in the Hospital the case history of the applicant was endorsed by Graded Specialist (Surgery) and Senior Advisor Surgery & GI Surgery of Command Hospital (Central Command) Lucknow opined that "Individual is a case of **CAECAL VOLVULUS (OPTE)**". He is unlikely to be a fit soldier, recommended to be boarded out in medical category EEE/P5".

8. In the above scenario, we are of the opinion that since the disease has started in less than two 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 mental disorders 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 three months of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.

9. Regional Bench of Armed Forces Tribunal had dismissed the claim for grant of disability pension in T.A. No. 1462/2010 vide order dated 23.05.2011, wherein the applicant was enrolled on 21.01.2000 and was discharged on 27.04.2000. His disability was assessed @ 80% for two years and it was opined by the Medical Board to be neither attributable to nor aggravated by military service. The said order has been upheld by the Hon'ble Apex Court in Civil Appeal arising out of **Dy. No. 30684/2017, Bhartendu Kumar Dwivedi Versus Union of**

India and Others, decided on November 20, 2017, by dismissing Civil Appeal on delay as well as on merits.

10. In **O.A. No 164 of 2019, Ex Rect Raushan Kumar Singh vs Union of India** decided on 01 July 2021 this Tribunal has rejected claim for grant of disability pension where applicant was enrolled in the army on 28.04.2014 and invalided out of service on 06.01.2015 and his disability was assessed @ 20% for life and considered as neither attributable to nor aggravated by service.

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

12. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 03 September, 2020

Ukt/-