

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 767 of 2022**Wednesday, this the 26th day of April, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Ex. Rect. Amit Kumar Singh (15827910L) Permanent R/o VPO
Ghusia Kalan, P.S. Bikaramanj, District Rohtas, Pin : 802212
(Bihar),
Presently residing at C/o Ram Kumar, Kh. No. 1046, Subash
Nagar, Ghaziabad (U.P.)-201001.

..... Applicant

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

Versus

1. Union of India through Secretary, Ministry of Defence,
South Block, New Delhi-110106.
2. The Chief of the Army Staff, Sena Bhawan, Rafi Marg, New
Delhi-110106.
3. OIC Records, The AOC Records, PIN : 900453, C/o 56
APO.
4. College of Materials Management (CMM), Sita Pahadi,
Jabalpur-482001 (MP).
5. Adjutant General’s Branch, PS-4, A Block, room No. 536,
5th Floor, KG Marg, IHQ of MoD (Army0, New Delhi-
110001.
6. PCDA (Pension), Draupadi Ghat, Prayagraj-211014.

.....Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh**, 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 allow the application of the applicant and set aside the decision of Second Appellate Committee on Pension (SACP) dated 18.05.2022 (Annexure A-1) vide which the grant of disability pension has been arbitrarily denied to the applicant.*
- b. *To issue suitable orders/directions commanding the respondents to grant disability pension to the applicant for life with rounding off benefits from 80% to 100% and to pay the arrears accrued thereon along with 12% interest per annum from the date of discharge from Army Service.*
- c. *Any other relief which this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the case may also be granted in favour of the applicant.*
- d. *Award the cost of Original Application in favour of the applicant.*

2. Briefly stated facts of the case are that applicant was enrolled in the Army Ordnance Corps of Indian Army on 27.06.2017 and was invalided out from service on

22.09.2019 (AN) in Low Medical Category after rendering 02 years, 02 months and 02 days of service under Rule 13 (3) Item IV of the Army Rules, 1954. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Military Hospital, Jabalpur on 24.07.2019 assessed his disabilities (i) **'ACUTE MYELOID LEUKEMIA (AML M2) – POST POST ALLOGENEI STEM CELL TRANSPLANTATION ND + 165"** @75% for life and (ii) **"GVHD GUT"** @15% for life, **composite disabilities @80% for life** and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 20.08.2020. The applicant preferred First Appeal which too was rejected vide letter dated 03.12.2020 which was communicated to the applicant vide letter dated 18.01.2021. The applicant preferred Second Appeal which too was rejected vide letter dated 18.05.2022 which was communicated to the applicant vide letter dated 04.06.2022. 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 disabilities 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 81(a) of Pension Regulations for the Army, 2008 (Part-I), which stipulates *that, "Service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section"*. Accordingly, the applicant was informed about the rejection/non-entitlement of disability pension. He further pleaded that since the applicant is not eligible for

Disability Pension, therefore, the question for the grant of benefit of rounding off of Disability Pension does not arise. 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 27.06.2017, and the diseases applicant were found to be suffering with in medical test first started in July, 2018, i.e. within one year and two months of joining the service.

7. In the above scenario, we are of the opinion that since the diseases have started in less than one year and 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 some diseases can escape detection at the time of enrolment, hence benefit of doubt cannot be given to the applicant merely on the ground that the diseases could not be detected at the time of enrolment. Since there is no causal connection between the diseases and military service, we are in agreement with the opinion

of the IMB that the diseases are 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 diseases manifested in less than one year and two months of enrolment, we are in agreement with the opinion of IMB that the diseases are NANA.

8. Additionally, in Civil Appeal No 7672 of 2019 in ***Ex Cfn NarsinghYadavvs Union of India &Ors***, decided on 03.10.2019, it has again 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.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 26 April, 2023

AKD/-