

Court No.1**Reserved****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 137 of 2019**Monday, this the 10th day of April, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Mukesh Kumar (No. 13989935H Ex Sepoy / Dvr MT), S/o Late
Khacheru Singh, Resident of Village : Khadauli, Post Office:
MIT, NH - 58, District Meerut (Uttar Pradesh)

..... Applicant

Ld. Counsel for the Applicant : **Shri Yashpal Singh, Advocate**

Versus

1. Union of India, through Secretary Government of India, Ministry of Defence, South Block, New Delhi - 110001.
2. Additional Director General Personnel Services, Adjutant General’s Branch, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office, New Delhi.
3. Officer-in-Charge Records, Army Medical Corps, PIN - 900450, C/o 56 APO
4. Commandant, 339 Field Hospital, PIN - 903339, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Adesh Kumar Gupta,
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) Issuing / passing of an order directing the respondents to consider case of the applicant for grant of disability pension and provide the same from due date accepting his application dated 18.12.2007 for discharge from service, including arrears and interest; and also the benefit of rounding off and other consequential service benefits and dues.

(ai) Issue / pass an order setting aside the Army Medical Corps Record Office (General) Part II Order No. 1/0533/011/2017 dated 21.04.2017 published in compliance of the order of Commandant, AMC Centre and College, Lucknow dismissing the applicant from service with effect from 20.04.2017, after summoning the records.

(aii) Issue / pass an order directing the respondents to hold an appropriate Medical Board to assess disability of the applicant.

(b) Issuing / passing of any other order or direction as this Hon'ble Tribunal may deem fit under the circumstances of the case.

(c) allowing this Original Application with cost."

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Army on 05.12.1994 in medical category SHAPE-1. While the applicant was on Military duty on 09.11.2004 he sustained injured while removing wheel of an army vehicle and applicant suffered disability '**Traumatic Partial Amputation of Right Hand Middle Finger**'. He was downgraded to low medical category. He was sanctioned 29 days leave from 15.01.2007 to 12.02.2007 to go to his native place, the applicant could not re-join duty. He submitted an application dated 18.12.2007 requesting for premature discharge from service on compassionate grounds, but he was not intimated about any decision taken by the unit. He was intimated vide letter dated 17.08.2012 that he is not entitled for AFPP Fund. The applicant prayed for grant of disability pension which was denied. Being aggrieved, the applicant has filed instant O.A. for grant of disability pension.

3. Learned counsel for the applicant submitted that applicant was enrolled in Army on 05.12.1994 in medical category SHAPE-

4. He sustained injury on 09.11.2004 while removing wheel of army vehicle resulted in Traumatic Amputation of Right Hand Medical Finger and applicant was placed in low medical category. A court of inquiry was held and his disability of the applicant was considered as attributable to military service. Applicant was granted leave from 15.01.2007 to 12.02.2007 but he could not rejoin duty due to domestic problems. On 18.12.2007, he submitted an application for premature discharge on compassionate grounds but he was not intimated of any decision taken by the competent authority. On 16.06.2008, he received his civil items/ personal belongings left in the unit through a messenger of the unit under letter dated 16.06.2008. The applicant submitted application from time to time requesting the respondents to release funds but of no avail. On 17.08.2012, he was intimated that he is not entitled for AFPP fund. He submitted application dated 18.12.2007 for premature discharge from service. Till date neither the applicant has been intimated of any decision taken on his application dated 18.12.2007 nor any order of discharge/ dismissal from service has been served upon him. Being aggrieved, the applicant has filed instant O.A. with the prayer to grant of disability pension.

5. Per contra the Ld. Counsel for the respondents has stated that the applicant sustained injury "Traumatic Partial Amputation

of Right Middle Finger” and we was placed in low medical category. A Court of inquiry was held and disability of the applicant was considered as attributable to military service. Applicant was granted leave from 15.01.2007 to 12.02.2007 but he failed to join duty. An apprehension roll was issued and after 30 days applicant was declared deserter. Applicant preferred applicant for release of balance amount of AFPP Fund and pension. He was informed that he has been declared deserter and will be in supernumerary strength of Army Medical Corps upto 10 years and will be dismissed from service on 20.04.2017. He was also informed that he is not entitled AFPP Fund balance being deserter. He was advised to report to Unit or Adm Bn, AMC Centre & College Lucknow but neither he has reported to his unit nor reported to Adm Bn, AMC Centre & College Lucknow. He was also informed that he is not entitled for AFPP Fund being deserter. The applicant was dismissed from service on 20.04.2017 by Commandant, AMC Centre & college, Lucknow under the provisions contained in Army Act 1950, Section 20 (3) and Army Order 439/63. Thereafter, AMC Record office vide letter dated 29.08.2017 forwarded the blank contingent Bill for Rs. 77485/- for final settlement of AFPP Fund and other documents, but the same have not been received by AMC Record Office till date. Now the applicant has filed instant

O.A. for grant of disability pension. As per provisions of Para 113 (a) of Pension Regulations for the Army 1961, Part-1 "An individual who is dismissed under the provisions of the Army Act is ineligible for pension or gratuity in respect of all previous service", therefore, he is not entitled for disability pension or gratuity in respect of all his previous service. Learned counsel for the respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

6. We have considered the submissions of the learned counsel for the parties and perused the material placed on record.

7. The question before us to decide is 'Whether the applicant who is deserter is entitled for disability pension?'

8. In the instant case applicant was enrolled in Army on 05.12.1994 and dismissed from service on 20.04.2017 being deserter. He was in low medical category and his disability was considered as attributable to military service. He has rendered 11 years, 08 months and 18 days of qualifying service excluding 187 days of nonqualifying service. He submitted application for premature retirement which was not answered by the respondents. It is surprise to note that apprehension roll was issued and personal belonging of the applicant was sent to his home and representative from unit visited applicant's home

repeatedly but neither he was caught by the Civil Police nor by Military Police. Keeping in view more than 11 years of unblemished service rendered by the applicant and his disability is attributable to military service, his case requires a sympathetic consideration but at this stage neither he can be granted service pension nor disability pension.

9. In view of the above, instant O.A. is partly allowed to the extent that respondents shall conduct a Re-assessment Medical Board of the applicant to assess his present medical condition within two months from the date of production of certified copy of this order. Further entitlement of disability pension to the applicant shall be subject to the outcome of the RMB.

10. With the aforesaid directions, instant O.A. is disposed off finally.

11. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 10 April, 2023

Ukt/-