

RESERVED
Court No.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 97 of 2017

Tuesday, this the 04th day of December 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex No. 14259257-H Ex Signal Man Sobh Nath, son of Ram Chandra Mishra, Resident of Village-Urua Vaishya, Haringtanganj, District-Faizabad, Uttar Pradesh.

..... Applicant

Ld. Counsel for the: **Shri JN Mishra,**
Applicant Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of the Army Staff, Army Head Quarters, South Block, New Delhi.
3. The Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.
4. The Senior Officer Incharge, Signal Records, Jabalpur.
5. The Commanding Officer, 2nd Technical Training Regiment, Jabalpur.

..... Respondents

Ld. Counsel for the
Respondents

:**Dr. Chet Narain Singh**
Central Govt Counsel.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The present Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- (a) *To issue an order or directions and set aside the Invalid Medical Board Proceeding dated 14.04.1986 PCDA Rejected the disability pension on dated 19.03.1987 which was informed by letter dated 01 March 1988 and rejection order dated 01.05.1998 and rejection order of Second Appeal dated 16.03.2000.*
- (b) *To issue an order or directions in grant of disability pension to the applicant from the date of discharge along with arrears and other consequential benefits in the interest of justice.*
- (c) *To allow this original application with costs.*

2. Brief facts in nut shell are that the applicant was enrolled in the Army on 31.08.1984 in medical category SHAPE-I and invalided out of service on 14.04.1986 in terms of Rule 13 (3) iii of Army Rules, 1954 in low medical category ‘EEE’ having rendered 01 year, 08 months and 13 days of service due to disability “LEPROSY LEPROMATOUS”. The IMB of the applicant opined that since the onset of the disease was within less than two years of joining the military service, and since the incubation period of disease “LEPROSY LEPROMATOUS” is two years or more, the disability is neither attributable to nor aggravated by military service. After discharge, the

applicant was treated for the said disease in the Military Hospital (MH) Agra and when he was fully recovered from the said disease, he was discharged from the hospital. Disability pension claim of the applicant was rejected vide order dated 09.01.1987. The applicant meanwhile preferred Writ Petition No 4879 of 1987 in the High Court of Judicature at Allahabad which was decided vide order dated 25.09.1997. The Hon'ble High Court directed the appropriate authority to consider the claim of the applicant for payment of disability pension in accordance with law. The applicant's first appeal consequent to order of Hon'ble High Court was rejected by Govt of India, Ministry of Defence vide order dated 01.05.1998 and second/final appeal also met with the same fate vide order dated 16.03.2000. Being aggrieved by rejection of his claim of disability pension, the applicant has approached this Tribunal by filing the present O.A. in the year 2017.

3. At this stage we feel it appropriate to mention that since the matters regarding payment of pension (disability pension in the instant case) relates to recurring cause of action, as such vide order dated 23.03.2017, delay in filing the O.A. was condoned and the O.A. was admitted. Thereafter counter and rejoinder affidavits have been exchanged between the parties.

4. Submission of Ld. Counsel for the applicant is that at the time of recruitment the applicant had undergone medical test and at that time his medical category was 'AYE'. The onset of the disease was detected in December 1985 i.e. after about 01 year and 03 months of his recruitment. It is stated that Guide to Medical Officers (Military Pensions) provides that in cases where manifestation of the disease occurs between 1-2 years in service it will be decided in their own merit. He further submitted that the disease was contracted during his service period in circumstances of Army services and thus the IMB has legally erred in opining that the disease was neither attributable to nor aggravated by military service.

5. Per contra Ld. Counsel for the respondents submitted that the claim of the applicant did not fulfil the relevant condition i.e. the disease was contracted during military service. It is submitted that at the time of recruitment only visible medical disability is checked by the Recruiting Medical Board and internal assessment is done at a later stage. He vehemently argued that the disease was contracted by the applicant prior to his recruitment and was not contracted during service period though it progressed and manifested during service period of the applicant. He further argued that the disease of LEPROSY is very slow in its progression. The incubation

period of the disease "LEPROSY LEPROMATOUS" as per medical literature can be anywhere between 02-10 years, thus the disease could not have been detected at the recruitment stage of the applicant because at that stage the disease had not yet manifested. He submitted that when the disease was detected within a period of 01 year and 03 months and the incubation period being at the minimum period of two years, by no stretch of imagination it can be said that the disease was contracted during service period, as such the IMB has rightly opined that the disability was neither attributable to nor aggravated by military service. It was also argued that the Hon'ble High Court in its judgment dated 25.09.1997 had issued a direction to consider the claim of the applicant for payment of disability pension in accordance with law. The first and second appellate authority after considering all relevant factors have rightly rejected the claim of the applicant by holding that the disability was not contracted during service period and was not attributable to and aggravated by military service.

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

7. Hon'ble the Supreme Court in the case of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) 7 SCC 316 has held, "*It may also be that*

owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorization of the member on enrolment and/or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.”.

8. The Guide to Medical Officers (Military Pensions) provides that attributability should be accepted in respect of any individual contracting Leprosy after being in service for two years. This case of applicant has been diagnosed within one year and three months of enrolment and hence it cannot be considered as attributable to military service. It specifically provides that in cases where manifestation of the disease occurs between 1-2 years of service, each case will be decided on its own merit, provided clear evidence of attributability for service is produced. If there is evidence to show that the individual has a prolonged and intimate contact arising out of military service conditions with an infection case, attributability will persist.

9. Leprosy is a chronic disease caused by a bacillus, *Mycobacterium leprae* (*M. leprae*). *M. leprae* multiplies very slowly and the incubation period of the disease is considered to be between 02-10 years. The exact mechanism of transmission of leprosy as per the most widely held belief is that the disease is transmitted by contact between cases of leprosy and healthy persons. Ld. Counsel for the applicant could not bring to our notice any medical authority wherein the incubation period of leprosy is shown to be less than two years or leprosy may be caused due to stress of military training.

10. Adverting to the facts of the present case, since the disease contracted by the applicant was detected in less than two years (one year and three months) from the date of initial recruitment, additionally, as per the rejection order by the First Appellate Authority it has been clearly mentioned that no case of Leprosy infection was reported among colleagues of the applicant in the Unit and company, as such, it cannot be said that the disease was as a result of infection contracted during service period, rather the facts and circumstances of the case clearly indicate that the disease progressed from infection contracted by the applicant prior to his recruitment in the Army and has manifested during his training as recruit. It

is not the case of the applicant that he had contracted the disease through infection from some of his colleague in the Unit or in the Company of other service personnel in the training establishment to which the applicant belonged to.

11. Thus we are of the considered opinion that a disease which requires a minimum period of 02 years for incubation and manifestation cannot be said to be attributable to military service if it has manifested only within a short period of 01 year and 03 months of enrolment as a recruit.

12. In view of the above, since the applicant has not been able to make out a case, therefore, O.A. lacks merit and deserves to be dismissed.

13. It is accordingly **Dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : December, 2018
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