

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION No. 1285 OF 2010**Tuesday, this the 11th day of December 2018**"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"**

Rakesh Kumar Singh (Service No. 155696) son of Sri Surendra Singh.

Through

1/1. Surendra Nath s/o Doodhnath, resident of Gram Bairath Vazidpur, district Chandouli.

1/2. Nirmala Devi wife of Surendra Nath, resident of Gram Bairath Vazidpur, district Chandouli.

1/3. Anish Kumar Singh, son of Surendra Nath, resident of Gram Bairath Vazidpur, district Chandouli.

..... Petitioners

Ld. Counsel for the : **Shri OP Kushwaha**, Advocate.
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.

2. Commodore through his Staff Officer (Pensions), Bureau of Sailors, Cheetah Camp, Mankhurd, Mumbai-88

3. The Controller of Defence Accounts (Navy), Pension Cell, Mumbai-400039.

.....Respondents

Ld. Counsel for the : **Dr.Shailendra Sharma Atal**,
Respondents. Central Govt. Standing Counsel.

ORDER

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

1. Aggrieved by denial to grant disability pension, the original Petitioner Rakesh Kumar Singh approached the Hon’ble High Court of Judicature at Allahabad by preferring Civil Misc. Writ Petition No. 53407 of 2003. Upon establishment of the Armed Forces Tribunal, said Writ Petition has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and renumbered as T.A. No. 1285 of 2010.

2. By means of this T.A., the following prayers have been made:-

- (i) *issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 05.12.2002 (Annexure-5) illegally rejecting the disability pension claim of the petitioner.*
- (ii) *issue a writ, order or direction in the nature of mandamus, commanding the Respondents to reinstate the petitioner in service if his disability is found to be less than 20 percent, as he is legally entitled to be retained in service if his disability is less than 20%.*
- (iii) *issue a writ, order or direction in the nature of mandamus commanding the Respondents to pay to petitioner disability pension if the disability of the petitioner has been assessed more than 20 percent for which he is legally entitled in case his disability is assessed more than 20 per cent.*
- (iv) *issue any other writ, order or direction as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.*
- (v) *to award the cost of the petition in favour of the petitioner.*

3. Before proceeding further, it may be mentioned that during pendency of the petition, the original Petitioner

(Rakesh Kumar Singh) died on 11.11.2013 leaving behind his father, mother and brother as legal representatives. Application for substitution was moved by said legal representatives and by order dated 01.05.2017 of the Tribunal, they were substituted and arrayed as petitioners 1/1 to 1/3 in the T.A.

4. Brief facts of the case as would appear from the record are that the deceased Rakesh Kumar Singh was enrolled in the Navy on 29.03.2001 as NMER Cook/Sailor and was despatched to Naval training establishment i.e. INS Chilka. As a part of Special Medical Examination during training, the applicant was medically examined at INS Chilka and was found to be suffering from Defective Colour Vision. Thus, on the recommendation of the Naval Medical Board, the deceased petitioner was invalided out of service on 01.10.2001. His disability pension claim was considered and rejected by the competent authority vide order dated 05.12.2002. The representations preferred against rejection of disability pension did not see the light of the day and it appears remained pending.

5. The argument espoused by learned counsel for the petitioners is that since the deceased petitioner was enrolled in the Navy in a fit state of health, as such, the invaliding disease was contracted due to stress and strain

of Navy services e.g. sea sickness in high seas and therefore it is to be considered as attributable to Naval services and, thus, the petitioners are entitled to receive disability pension of deceased petitioner. It is submitted that since the respondents had directed for submission of relevant papers for grant of disability pension to the deceased petitioner, which was duly complied with, the respondents were satisfied that the deceased petitioner was entitled to receive disability pension. Learned counsel further canvassed that in any case, since Rakesh Kumar Singh died on 11.11.2013, as such his legal representatives are also entitled to receive arrears of disability pension of the deceased from the date of discharge, i.e. 01.10.2001 till date of his death, i.e. 11.11.2013. It was also argued that in case the invaliding disease of the deceased petitioner was less than 20%, in such a case, he was entitled to be reinstated till his death.

6. Per contra, learned counsel for the respondents submitted that the deceased shortly after his enrolment in the Navy on 29.03.2001 was despatched to training establishment INS Chilka where as a part of Special Medical Examination for trainees, the deceased petitioner was medically examined at INS Chilka and was found to be suffering from Defective Colour Vision (CP IV). It is

submitted that the permissible standard of the defect, i.e. Defective Colour Vision, in all branches of the Navy is CP-II. It was further submitted that the claim of the deceased petitioner that he picked up this disability due to stress and strain in high seas is baseless. The deceased petitioner was being trained in an static training establishment called INS Chilka and this disability was discovered within two months of his enrolment. He further contended that the disease suffered by the deceased petitioner was constitutional in nature and the deceased petitioner suffered the said medical disorder prior to his enrolment in the Navy. He concluded that since it is not possible to check up all medical aspects at the time of recruitment, there is always a detailed follow up medical check up during training. It is in this special follow up medical check up that this defective colour vision was detected. He pleaded for the T.A. to be dismissed.

7. We have given our anxious thoughts to the material placed on record and the arguments by both the learned counsel.

8. Based on the arguments advanced by both sides and material on records we have come to the following factual conclusion:-

- (a) That INS Chilka is a static formation whose primarily role is to train Naval recruits as Sailors. Hence we agree with the respondents that this is not a case of stress and strain caused by Naval service in high seas.
- (b) Medical evidence and medical literature on the subject is clear that colour defect is constitutional in nature and is normally inherited. Since there is no history of injury to the eyes of the deceased petitioner, we tend to agree with the respondents and the opinion of IMB that the colour defect of the deceased petitioner was constitutional in nature.
- (c) That the deceased petitioner was a recruit under training and hence he was akin to a probationer. Thus a mandatory special medical check up applicable for all trainees within few months of training is like the extension of Ist medical and therefore prima facie, the respondents as an employer, have a right to reject a probationer who is not up to the required medical standards for Navy.

9. During follow up mandatory special medical check-up, when the deceased petitioner was under training at INS

Chilka, and had spent about two months after the date of his enrolment, the deceased petitioner was found to be suffering from the invaliding disability of defective colour vision. This disability is usually caused due to hereditary conditions and would persist throughout the life of the petitioner. Thus arguments of learned counsel for the petitioners that the disease has been contracted due to sea sickness or stress and strain of Naval services in high seas lacks credibility.

10. Military is a combatant force and medical fitness at the time of recruitment is a must for a recruit. Since the disability of the petitioner was not exactly a disease but a colour defect which was of a constitutional origin, we by no stretch of imagination can make the same as attributable to or aggravated by military service.

11. A conceptuous of our observations is that the T.A. is devoid of merits and deserves to be dismissed, hence **dismissed.**

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: December, 2018
gsr

(Justice S.V.S. Rathore)
Member (J)

