

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 610 of 2021**

Tuesday, this the 15th day of February, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 22055392A Ex. Rect. Narendra Kumar S/o Hema Ram (Ex-Serviceman) R/o Vill - Godawari, Po-Salasar, Tehsil - Sujangarh, Dist-Churu, (Rajasthan)-331506.

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of Mod (Army) DHQ, PO New Delhi-110011.
3. Director –PS-4, AG Branch, IHQ of Ministry of Defence (Army), Room No.10, Plot No-108 (West), Brassey Avenue, Church Road, new Delhi-01.

.....**Respondents**

Ld. Counsel for the : **Ms. Preeti Mala**, 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 quash or set aside the Respondents medical board Opinion and initial rejection by competent authority.*
- (B) *To issue order or directions to the respondents to grant disability pension to the applicant for the disability he had, with effect from 01/07/2021 (Date of discharge : 14/06/2020) with all consequential benefits including rounding off benefit in terms of Govt. of India letter dated 31 Jan 2001 and Judgement passed by Hon’ble Apex Court in case of Ram Avatar Vs UoI & others.*
- (C) *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*
- (D) *Allow this Application with cost.*

2. Briefly stated facts of the case are that applicant was enrolled in the Army Medical Corps of Indian Army on 06.01.2020 and was invalided out from service on 14.06.2020 in Low Medical Category after rendering 05 months and 08 days of service under Rule 13 (3) Item III (iii) of the Army Rules, 1954. At the time of invaliding

from service, the Invaliding Medical Board (IMB) held at Base Hospital Lucknow on 12.05.2020 assessed his disability '**CROSSED FUSED ECTOPIA WITH POORLY FUNCTIONING LEFT MOIETY (Q-63-2)**' @ 6 to 10% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected by the respondents which was communicated to the applicant vide letter dated 31.12.2020. The applicant preferred First Appeal but of no avail. 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 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 Regulation 173 of Pension Regulations for the Army, 1961 (Part-I), which stipulates that, *"Unless otherwise specifically provided a disability pension consisting of service element and disability element 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 in non-battle casualty and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."* Accordingly, the applicant was informed about the rejection/non-entitlement of 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 Regulation 173 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 05 months and 08 days of service. 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 06.01.2020, and the disease applicant was found to be suffering with in medical test first started on 31.01.2020, i.e. within twenty five of joining the service.

7. 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 twenty five of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.

8. Further, para 74 of Chapter VI of Guide to Medical Officers, 2008 (MP) provides that "*Certain congenital diseases such as polycystic disease of kidney, horse-shoe kidney, pelvic-ureteric junction obstruction (hydronephrosis), ectopic kidney, vesico-ureteric reflux, megaureter, ureterocele, retrocaval ureter, ureteral duplication, and duplication of collecting system escape detection at the time of enrolment and many manifest later in service as asymptomatic urinary abnormality, hypertension and frequent urinary tract infection. Such kidneys may be easily injured if hydronephrotic or ectopically located. Aggravation will be considered if there is trauma related to service.*"

9. As per the opinion of the Specialist the applicant has no trauma related issues. The applicant has failed to show

very valid reason and strong medical evidence to dispute the opinion of the Medical Board.

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

11. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 15 February, 2022

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