

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 884 of 2023**Friday, this the 01st day of March, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)”**
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

No. 1490966H, Ex. Recruit Subash Kumar Singh, S/o Ram Sakal Singh, Resident of Village and Post Office – Sarna, District – Bhojpur, Bihar.

..... ApplicantLd. Counsel for the Applicant : **Shri Shashi Kant Chaturvedi**, Advocate
Shri Vinay Pandey, Advocate

Versus

1. Union of India, through, Secretary, Ministry of Defence, (Army), DHQ PO, New Delhi -11.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. The Officer –in- Charge, Records, BEG Roorkee, PIN-247667.
4. Principal Controller of Defence Accounts, Draupadi Ghat – Prayagaj, (U.P).

..... RespondentsLd. Counsel for the Respondents. : **Ms. Deepti Prasad Bajpai**, Advocate
Central Govt. Standing Counsel

ORDER**“Per Hon’ble Mr. Justice Anil Kumar, 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) *Issue/pass an order or direction of appropriate nature to quash the decision taken by Army Authorities as mentioned in letter of A true photocopy of BEG Records Office letter bearing Number 9933/05/Pen/R dated 02 August 1997 copy of letter bearing No.43/56/82/3-97 dated 23 July 1997, Annexure No.A-1(i), Annexure No.A-1(ii) respectively, rejecting the disability pension claim.*
- (b) *Issue/pass an order or direction of appropriate nature directing the respondents to concede the arributability and aggravation of ID due to military service and grant disability pension on account of invalidation from Army Services with the benefit of rounding off.*
- (c) *Issue/pass an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.*
- (d) *Issue/pass any other or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*

(e) Allow this application with costs.

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 09.11.1994 and was invalided out from service on 25.08.1995 (AN) in Low Medical Category under Rule 13 (3) Item III (iv) of the Army Rules, 1954. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Military Hospital, Roorkee on 21.07.1995 assessed his disability **'RHEUMATIC HEART DISEASE (RHD) WITH AR/MR'** @60% for two years 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 vide letter dated 23.07.1997 which was communicated to the applicant vide letter dated 08.08.1997. 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. He further submitted that at the time primary medical examination the blood sample of every recruit is collected for ascertaining the infections and others abnormality which can be diagnosed. He has given some literature downloaded from internet in which it is stated that how is rheumatic heart disease diagnosed. 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 Invaliding Medical Board (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 element. 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 198 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 service element of disability pension/invalid pension is ten years, but in the instant case the applicant has put in only 09 months and 16 days of service. She 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 09.11.1994, and the disease applicant was found to be suffering with in

medical test first started on 31.03.1995, i.e. within five months of joining the service.

7. In the above scenario, we are of the opinion that since the diseases have started within five months of his enrolment, hence by no stretch of imagination, it can be concluded that they have been caused by stress and strains of military service. 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 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 RMB 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 within five months of his enrolment, we are in agreement with the opinion of IMB that the disease is 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 some diseases cannot be detected at the time of recruitment and their subsequent manifestation does not entitle a person for disability pension unless there are very valid reasons and strong medical evidence to dispute the opinion of 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 Anil Kumar)
Member (J)

Dated : 01 March, 2024

Ashok /AKD/