

RESERVED
COURT NO.1

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

ORIGINAL APPLICATION No. 44 of 2018

Wednesday, this the 09th day of January, 2019

“Hon’ble Mr. Justice SVS Rathore, Member (J)
Hon’ble Air Marshal BBP, Sinha, Member (A)”

No 3003834A (Ex Recruit) Vinod Kumar, Son of Shri Jagdeesh Singh, resident of Village-Harnagarapur, Post-Thorwa, District-Manipuri-205263 (UP).

.....Applicant

Ld. Counsel for the : **Shri R. Chandra**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters Ministry of Defence, (Army) DHQ Post Office, New Delhi-11.
3. The Officer-in-Charge, Records the Rajput Regiment, PIN-900427, C/O 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad-14 (UP).

.....Respondents

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

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

1. Present O.A. has been preferred by the applicant under section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (i) *The Hon’ble Tribunal may be pleased to set aside the orders dated 12.11.2003 (Annexure No A-1), order dated 10.02.2017 (Annexure No A-2).*
- (ii) *The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 13.06.2002 along with its arrears and interest thereon at the rate of 18% per annum. Further disability pension be rounded off @ 50%.*
- (iii) *Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*

2. The thumbnail sketch of the facts is that the applicant was enrolled in the Indian Army on 30.01.2002 as an infantry soldier and was made to undergo basic military training at the Rajput Regimental Centre, Fatehgarh. During course of training the applicant was subjected to mandatory Second Medical Board at the Regimental Centre on 04.02.2002. The Second Medical Board found the applicant suffering from '**BOW LEG**' and he was referred to Base Hospital (BH), Lucknow for opinion of Senior Advisor Surgery who after consultation with Orthopaedic Surgeon opined the applicant to be invalided out of service on account of 'BOW LEG'. The applicant was brought before Invaliding Medical Board

(IMB) which recommended him to be invalided out of service in medical category S1H1A1P5E1. The applicant was accordingly invalided out of service on 30.06.2002 under Rule 13 (3) iv of the Army Rules, 1954. The duly constituted IMB assessed his disability @ 11-14% for life and opined the disability of the applicant as neither attributable to nor aggravated by military service (NANA) and also mentioned that 'the disability existed before entering into service'. The applicant's disability pension claim was accordingly rejected vide order dated 22.02.2003 and communicated to the applicant vide letter dated 12.11.2003. Appeal preferred by the applicant was also rejected vide order dated 10.02.2017. Hence this O.A.

3. The Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army through Unit Quota Recruitment in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disability prior to enrolment, therefore any disability detected/suffered after joining the service, should be attributable to military service and the applicant is entitled to grant of disability pension.

4. Per contra, Ld. Counsel for the respondents contended that the applicant's disability is neither attributable to nor aggravated by military service, hence

the claim for disability pension has rightly been rejected by the competent authority. It was also submitted that the applicant's disability was detected within one week of enrolment while undergoing mandatory second medical board wherein it was found that the disability suffered by the applicant was existing prior to his enrolment meaning thereby his disability is constitutional in nature and not related to the service.

5. Admittedly, the applicant was undergoing training. He was not even attested. Thus, the status of the applicant was only of a probationer. Law is settled on the point that a probationer can be discharged from service at any point of time by his employer especially in the Army where only fit soldiers are required. In the instant case since the applicant was found to be suffering from a deformity called 'BOW LEG' i.e. a constitutional disease, that too when the IMB has endorsed that the disability existed before enrolment, the respondents are not bound to retain him in service.

6. We have given our anxious thought to the material placed on record and the arguments by both the Ld. Counsels. We are of the considered view that the applicant was not suffering from any disease but a deformity of 'BOW LEG' which is constitutional in nature. Hence to decide the attributability factor the only legal

issue before us is that has the Invaliding Medical Board (IMB) given reasons as to why this deformity could not be detected at the time of enrolment? In this particular case we have found that the IMB has given reasons as to why this deformity could not be detected at the time of enrolment and we are satisfied with the same.

7. Since medical check-up of recruits at the time of selection is done in outdoor locations which may not have required facilities for proper medical check-up hence all recruits mandatorily have to undergo a detailed second medical check-up within a few months of enrolment. Thus the second medical check-up is an extension of first medical check-up at the time of selection. In the instant case we find that after detection of 'BOW LEG' in second medical check-up the applicant was referred to Command Hospital, Central Command, Lucknow for opinion of Senior Advisor Surgery who after due consultation with Orthopaedic Surgeon opined the applicant to be discharged from service, therefore he was discharged from service after examining in all its pros and cons with an endorsement that the disability existed before enrolment.

8. Army is a combatant force and medical fitness at the time of recruitment is a must for a recruit. Since the

disability of the applicant is not a disease but a deformity which is a constitutional disorder, we by no stretch of imagination can make the same as attributable to or aggravated by military service. The same view has also been endorsed by the pension sanctioning authority who after examining the disability pension claim, rejected the same stating that the disability is NANA and constitutional in nature.

9. As a result of above discussions O.A. lacks merit and deserves to be dismissed.

10. Accordingly, the petition fails and is hereby **dismissed**.

No order as to cost.

(Air Marshal BBP Sinha) (Justice SVS Rathore)
Member (A) Member (J)

Dated: January, 2019
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