

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 255 of 2020

Friday, this the 2nd day of July, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 15509831P Ex-Rect Anuj Pratap Singh
S/o Shri Shankar,
R/o Village – Jhakari, Post – Abbrarpur Kot, Tehsil – Aliganj,
District – Etah (UP) – 207247

..... Applicant

Ld. Counsel for the Applicant: **Shri Manoj Kumar Awasthi**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MOD (Army), Army HQ, South Block, New Delhi – 110011
3. The Officer-in-Charge Records, Record Office, Kavachit Corps Abhilekh Armoured Corps Records Pin 900476, C/o 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh**,
Central Govt Counsel.

ORDER

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

- “A. To issue/pass an order or directions to set aside/quash the order dated 14.05.2019 passed by respondent no. 3.
- B. To issue/pass an order or directions to the respondents to re-enroll the applicant in services and grant consequential

benefits of notional re-instatement from the date of stoppage of disability element of disability pension i.e. from 13.05.2018 along 12% interest on arrear.

- C. To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- D. To allow this original application with costs."

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 28.09.2012 and was invalided out of service on 21.07.2014 (AN) in terms of clause 13 (3), Item IV of Army Rules, 1954 in low medical category having rendered 01 year, 09 months and 18 days of service. The applicant was initially placed in low medical category A3 (T-6) with effect from 20.08.2013 for diagnosis "FRACTURE TRANSVERSE PROCESS LV3 (LT)". Further on subsequent review of medical category, medical authorities opined that "***in view of the sequelae of tuberculosis in the form of residual structure changes and functional deficit in spirometry, the individual will not make a fit soldier. Hence, it is recommended that the individual be invalidated out of service in LMC-P5 as per Army order 150/75***". The Invaliding Medical Board (IMB) held at Military Hospital, Pune on 24.06.2014 assessed his disability "**NEW SMEAR AND CULTURE POSITIVE PULMONARY TUBERCULOSIS (NOW SMEAR NEGATIVE)**" @ 100% for two years w.e.f. 22.07.2014 to 23.06.2016 and opined the disability as attributable to military service. Accordingly, applicant was granted service element @ 4275/- per month and disability element @ Rs. 3510/- per month for two years from 22.07.2014 to 23.06.2016 vide

PPO dated 17.04.2015. Further Re-Assessment Medical Board of the applicant was held at Military Hospital, Agra Cantt on 13.05.2016 and his disability was assessed @ 100% for two years w.e.f. 13.05.2016 to 12.05.2018. Accordingly, applicant was granted disability element @ 3510/- per month for two years w.e.f. 13.05.2016 to 12.05.2018 vide PPO dated 08.09.2016. Further Re-Assessment Medical Board of the applicant was held at Military Hospital, Agra Cantt on 13.04.2018 and his disability was assessed @ Nil% for life and Medical Specialist opined that "No further Re-Assessment Medical Board required". Accordingly, disability element of the applicant was discontinued w.e.f. 13.05.2018. The applicant approached Armoured Corps Record vide e-mail dated 04.10.2018 and 20.10.2018 seeking the reasons for discontinuation of his disability element which were suitably replied vide letter dated 11.10.2018 and 03.11.2018 respectively. Thereafter, applicant submitted an application dated 31.12.2018 under RTI 2005 seeking information/documents which were provided to the applicant vide letter dated 22.01.2019. Thereafter, the applicant submitted an appeal dated 11.04.2019 addressed to the Chief of the Army Staff Secretariat for reinstatement into service which was received by Armoured Corps Records vide IHQ of MOD (Army) letter dated 02.05.2019 and applicant was suitably replied vide letter dated 14.05.2019. The applicant has filed the present Original Application to re-instate him in service.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for

service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment. The disease of the applicant was contracted during the service, hence it was assessed @ 100% for two years considering it attributable to Military Service by IMB. The applicant was granted service element @ 4275/- per month and disability element @ Rs. 3510/- per month for two years from 22.07.2014 to 23.06.2016 vide PPO dated 17.04.2015. Further Re-Assessment Medical Board of the applicant was held at Military Hospital, Agra Cantt on 13.05.2016 and his disability was assessed @ 100% for two years w.e.f. 13.05.2016 to 12.05.2018. Accordingly, applicant was granted disability element @ 3510/- per month for two years w.e.f. 13.05.2016 to 12.05.2018 vide PPO dated 08.09.2016. Further Re-Assessment Medical Board of the applicant was held at Military Hospital, Agra Cantt on 13.04.2018 and his disability was assessed @ Nil% for life and Medical Specialist opined that "No further Re-Assessment Medical Board required". Accordingly, disability element of the applicant was discontinued w.e.f. 13.05.2018. The applicant sent representation through e-mail for redressal of his grievance but the same was rejected by the respondents vide order dated 10.07.2018. Thereafter, applicant submitted an application dated 31.11.2018 under RTI 2005 seeking information/documents which were provided to the applicant vide letter dated 22.01.2019. Thereafter, the applicant submitted an appeal dated 11.04.2019 addressed to the Chief of the Army Staff Secretariat for re-instatement into service which was received by Armoured Corps Records vide IHQ of MOD (Army) letter dated 02.05.2019 and

applicant's appeal was illegally rejected vide letter dated 14.05.2019 by mentioning that "***There are no such provisions for reinstatement in the Army once discharged from service***".

4. The applicant has drawn attention to Regulation 143 of the Defence Service Regulations, 1987, which reads as under :-

"143. Re-enrolment of Ex-Servicemen Medically Boarded Out. –

(a) Ex-Servicemen, who are in receipt of disability pension, will not be accepted for re-enrolment in the Army.

(b) Ex-Servicemen, medically boarded out without any disability pension or those whose disability pensions have been stopped because of their disability having been re-assessed below 20% by the Re-Survey Boards, will be eligible for re-enrolment, either in combatant or non-combatant (enrolled) capacity in the Army, provided they are re-medically boarded and declared fit by the medical authorities. If such an ex-serviceman applied for re-enrolment and claims that he is entirely free from the disability for which he was invalided, he will be medically examined by the Rtg MO and if he considers him fit, the applicant will be advised to apply to officer-in-charge, Records Office concerned, through the recruiting officer for getting himself re-medically boarded. The officer-in-charge, Records office concerned, on receipt of the application, will arrange for his medical examination at a Military Hospital nearest to his place of residence. The individual concerned will have to pay all his expenses, including that on accommodation and journey to and from the place of medical examination.

If the individual is found fit and re-enrolled on regular engagement, he will be enlisted for the full period of combined colour and reserve service, subject to the following conditions:-

(i) If he had not previously completed the minimum period of colour service after which he could be transferred to the reserve, he will rejoin the colours and his previous colour service will count towards the minimum service required for transfer to the reserve.

(ii) If he had previously completed the minimum period of colour service required for transfer to the reserve and is fully trained and suitable in all other respects, he may be re-enrolled, provided a vacancy in the reserve exists, and be immediately transferred to the reserve".

5. Learned counsel for the applicant also relied upon judgment of AFT (PB) New Delhi in OA No. 32 of 2011 ***Recruit Haseen Ali vs.***

Union of India & Ors, decided on 21.02.2012 and submitted that applicant's case is squarely covered by this judgment and therefore, applicant be re-instated in service.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant has been paid disability element as per recommendations of Re-Assessment Medical Board (RAMB) upto 12.05.2018 and thereafter disability being assessed as Nil% for life by RAMB held on 13.04.2018, disability element has been stopped w.e.f. 13.05.2018.. Hence, as per Para 135 (e) and 143 of Regulations for the Army 1987 (Revised), applicant is not entitled for re-instatement in service. He pleaded for dismissal of the O.A.

7. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents and perused the record.

8. As per opinion of Re-Assessment Medical Board dated 13.04.2018 applicant's disability has been assessed @ Nil% for life and it has also been opined by the Medical Specialist that 'No further Re-Assessment Medical board is required". It means the applicant is totally cured and no more suffering from the disease "**NEW SMEAR AND CULTURE POSITIVE PULMONARY TUBERCULOSIS (NOW SMEAR NEGATIVE)**", that is the reason disability element of the applicant has been discontinued w.e.f. 13.05.2018.

9. The plea of the respondents regarding reinstatement saying that there is no such provision is not tenable. As per Para 143 of Defence Service Regulations, 1987, applicant is entitled to reinstatement.

10. Consequently, Original Application is **allowed**. The respondents are directed to reinstate the applicant back in service in the same rank

in which he was invalided out of service on 21.07.2014. However, applicant shall not be entitled for any back wages or other benefits. The respondents are further directed to comply with the order within four months from the date of production of a certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: July, 2021

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