

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 453 of 2020**Tuesday, this the 13th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Pramod Kumar Singh (No 14670007P Ex Nk Cfn), S/o Shri Kedar Nath Sing. R/O
Village & Post – Muradeen, District-Ballia (UP).

..... Applicant

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

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi – 110011.
3. The Officer In-charge, EME Records, PIN-900453, C/o 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat Allahabad14 (UP).

..... Respondents

Ld. Counsel for the Respondents: **Dr. Chet Narain Singh**,
Central Govt. Standing 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) The Hon'ble Tribunal may be pleased to set aside the order dated 14.10.2014 (Annexure No 1) and order dated 22.11.2019 (Annexure No A-2).

(b) The Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 20.01.2013 along with its arrears and interest thereon at the rate of 18% per annum.

(c) 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 case including cost of the litigation.”

2. The facts of the case, in brief, are that applicant was enrolled in the Army on 19.03.2004 and was invalided out from service on 19.01.2013 in low medical category being medically unfit. The Invaliding Medical Board (IMB) assessed his disability "**ALCOHOL DEPENDENCE SYNDROME**", @ 20% for life (Net assessment qualifying for disability pension –Nil%) and opined that disability of the applicant was neither attributable to nor aggravated by military service (NANA). Applicant's disability pension claim was rejected vide order dated 14.10.2014, since disability i.e. '**ALCOHOL DEPENDENCE SYNDROME**' (ADS) is neither attributable to nor aggravated by service. Applicant was advised to prefer an appeal, if not satisfied, but he did not do so. Wife of applicant submitted representation to EME Records for grant of disability pension to her husband through District Soldier Board Ballia, but there was no reply. Thereafter, the applicant filed an O.A. before this Hon'ble Tribunal for grant of disability pension which was dismissed vide order dated 28.09.2016 on the ground that applicant did not avail alternative remedies. While dismissing the O.A. applicant was directed to prefer appeals to the Appellate Authorities. Thereafter applicant submitted first appeal on 06.10.2016, but respondent No. 3 returned it for re-submission alongwith undertaking certificate and delay report with full justification. Applicant again re-submitted first appeal giving reasons that delay took place due to harassment by authorities in accepting the first appeal. On 22.11.2019, respondent No. 3 intimated that first appeal could not be processed being time barred. Hence this Original Application has been filed for grant of disability pension.

3. Learned Counsel for the applicant submitted that applicant was medically fit when he was enrolled in the service and any disability not recorded at the time of enrolment should be presumed to have been caused subsequently while in service. The action of the respondents in not granting disability pension to the applicant is illegal, therefore, the disability of the applicant is to be considered as aggravated by service and he is entitled to get disability pension @ 20% duly rounded off to 50%.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that the applicant had rendered approximately 08 years of service, and he is not eligible for grant of service pension under Para 132 of Pension Regulation for the Army, 1961 (Part-I) which stipulates that “The minimum period of qualifying service required for an invalid pension is 10 years qualifying service.” His further submission is that since the applicant has not rendered minimum qualifying service as aforesaid, he is not entitled to disability pension. He pleaded for dismissal of O.A.

5. Learned counsel for the respondents further submitted that as per Para 21, 22 & 23 of AO 9/2007/DGMS which deals with Management of JCOs/OR in LMC for alcohol dependence/drug abuse and para 9 (a) of DGAFMS Medical Memorandum No. 171/2002, medical authorities did not notice any substantial improvement in the applicant’s disease. He was time and again advised to abstain from consuming alcohol, but applicant had increased intake of alcohol. Accordingly, he was recommended to be invalided out of service as per provisions of AO 9/2007 and DGAFMS Memorandum No 171/2002 in low medical category for the disability “Alcohol Dependence Syndrome’. Learned counsel for the respondents further submitted that the applicant is himself responsible for this syndrome.

6. Learned counsel for the respondents further submitted that :-

- (a) Rule 132 of pension Regulation for the Army 1961 (Part-1) stipulates that **“Unless otherwise provided for, the minimum qualifying colour service for earning a service pension is 15 years”** whereas in the instant case, the applicant has rendered 08 years of service, hence he is not entitled for service pension.
- (b) Rule 173 of Pension Regulations for the Army 1961 (Part-1) stipulates that **“Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 percent or over”**. In the instant case, IMB has viewed disability “ALCOHOL DEPENDENCE

SYNDROME” as neither attributable to nor aggravated by military service (NANA), hence applicant is not entitled for disability pension.

7. Learned counsel for the respondents further relied upon judgment on similar grounds passed by the Hon’ble Supreme Court in SLP (C) No. 23727/2008 in case of **UOI vs. Damodaran AV** in which it is viewed that “***the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence***”.

8. In another judgment on similar grounds passed by the Hon’ble High Court of Kerala at Ernakulam in WA No. 1071 of 1997 (OP No. 18002 of 1993) in case of **UOI vs. Sreekumar P**, the Hon’ble Court has viewed that :-

(a) *“the disability has been assessed by a competent expert body like the medical board whose conclusions are to be accepted as correct unless contradicted by any other medical board by cogent evidence”.*

(b) *“Once the expert body like the medical Board expresses an opinion it is entitled to great weight. Unless the medical findings are utterly perverse this Court exercising jurisdiction under Article 226 of the Constitution cannot go behind the said opinion and substitute its own opinion for that of the expert body”.*

(c) *“This court while exercising jurisdiction under Article 226 of the Constitution is not sitting as an Appellate Court. The findings of the expert body cannot be interfered with unless it is palpably wrong”.*

9. AFT (RB) Jaipur in its order dated 17.05.2012 in O.A. No. 104/2011, **Ex Sep Umrao Singh vs. Union of India and others** has viewed that “***in the instant case, the Release Medical Board has concurrently held that the disability suffered by the applicant is neither attributable to nor aggravated by military service and there is nothing on record, which establishes that the disability suffered by the applicant is either attributable to or aggravated by military service. In view of the matter, this application lacks merit and deserves to be dismissed***”.

10. We have given our considerable thoughts to both sides and have carefully perused the records. Firstly, we observe that the respondents have relied on Pension Regulations for the Army 1961, which have been supersede by Pension Regulation for the Army 2008.

11. Since, applicant's disability is considered as neither attributable to nor aggravated by military service (NANA) by the IMB, applicant does not fulfil the requirement of Rule 81 (a) of Pension Regulations for the Army, 2008 for grant of disability pension. The provisions of AO 9/2007 and DGAFMS Memorandum 171/2002 are also applicable. Further, with regard to grant of rounding off of disability pension it is averred that since, the applicant is not entitled to disability pension, the question of grant of benefit of rounding off of disability pension does not arise.

12. Thus, in light of the above and in view of the various judgments delivered by the Hon'ble High Courts and the Hon'ble Apex Court, an inference may be drawn that Medical Board is a duly constituted body and findings of the board should be given due weightage and credence. Since, the IMB has declared applicant's disability as NANA, he is not entitled for disability pension.

13. With the aforesaid observations, we feel that applicant has not been able to make out a case and the O.A. is liable to be dismissed. It is accordingly **dismissed.**

14. No order as to costs.

15. Pending applications, if any, to be disposed off.

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

Dated: 14th, July 2021
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