

RESERVED
Court No 3
(Ser No 21)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH
LUCKNOW**

Original Application No. 836 of 2022

Wednesday, this the 05th day of July, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj. Gen. Sanjay Singh, Member (A)

Ketaki Ranjan Nath (Ex.JC-202463-X/Sub.Maj), S/o Sri Karanya Kumar Nath, Correspondence Address-34 Vrindavan Dham, Karumbalai Karuppur, Post Salem, Tamilnadu PIN-636312, at Present R/o Sri Sri Radha Madhav Mandir, Mainavati Marg, Bithoor Road, Kanpur Nagar, Kanpur, U.P-208002.

.....Applicant

Ld. Counsel for : **Shri Ashok Kumar**, Advocate
Applicant

Versus

1. The Union of India, through Secretary, Ministry of Defence South Block, Delhi-110011.
2. Officer In-charge Records, Army Ordnance Corps, PIN-900453, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pensions), Draupati Ghat, Allahabad.

.....Respondents

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

ORDER

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(i) This Hon'ble Court may graciously be pleased to direct the respondent no. 2 to made publication of Part-II order in the service book of applicant for the disabled son of applicant namely Kalyan Nath suffering with "Diffuse Disc Bulge L4.5 Lever & L5 S1 Level Limping upon thecal SAC and B/L tracking Nerve Roots with mild B/L Nemo Foraminal Narrowing patient with Radiculopathy both Lower Limb Muscle Power both Lower Limb Grade 4/5", with 45% disability (Permanent), "Locomotor Disability", in accordance with rules of the department, being the disabled son of applicant and further direct the respondent no. 3 to made endorsement in PPO of applicant accordingly.

(ii) This Hon'ble Court may further be pleased to pass such other and/or further order as deemed fit, proper and necessary in the circumstances of this case.

(iii) Award costs to the applicant.

2. Brief facts of the case are that the applicant No Ex JC-202463-X Sub Maj Ketaki Ranjan Nath was enrolled in the Army as Sepoy on 31.07.1971 and retired from service after completion of terms of engagement having rendered 31 Years, 10 months and 29 days service. He is in receipt of service pension vide PPO No. 8702612672004. As per his service record, names of dependent Smt Pratibha Nath (wife) whose date of birth is 03 March 1956, Ms Jharna Nath (daughter) whose date of birth is 03 July 1977, Mr Kallol Nath (son) whose date of birth is 17 Sep 1979 and Kalyan Nath (son) whose date of birth is 25 Aug 1982 are entered in his service records. Kalyan Nath is suffering from Locomotor disability as **Diffuse Disc Bulge L4.5 Lever & L5 S1 Level Limping Upon thecal**

SAC and B/L tracking Nerve Roots with mild B/L Nemo Foraminal Narrowing patient with Radiculopathy both lower limb Muscle Power both Lower Limb Grade 4/5”, with permanent disablement @ 45% for life as per medical certificate dated 17.04.2021 (**Annexure A-2**) issued by Chief Medical Authority Kanpur Nagar, Uttar Pradesh. This O.A. has been filed by the applicant for notifying Part-II Order with regard to disablement of his son on the basis of medical certificate issued by the medical authorities.

3. Learned counsel for the applicant submitted that his son is suffering from Locomotor disability as **Diffuse Disc Bulge L4.5 Level & L5 S1 Level Limping Upon thecal SAC and B/L tracking Nerve Roots with mild B/L Nemo Foraminal Narrowing patient with Radiculopathy both lower limb Muscle Power both Lower Limb Grade 4/5”,** with permanent disablement @ 45% for life which is certified by the medical authority vide certificate dated 17.04.2021. It was further submitted that he applied for publication of Part-II Order for disability of his son but the same being denied by the respondents, he submitted representation dated 25.10.2021 requesting for notification of Part-II Order, but the respondents again asked certain documents vide letter dated 29.12.2021. Vide letter date 16.02.2022 respondents had directed applicant again to re-submit the original documents. Aggrieved by the inaction on the part of the respondents this O.A. has been filed.

4. Learned counsel for the applicant pleaded that direction to be issued to the respondents for publication of Part-II Order in respect of his disabled son who is suffering from 45% disability due to the aforesaid infirmity.

5. On the other hand, learned counsel for the respondents admitted that applicant's son is suffering from Locomotor disability as **Diffuse Disc Bulge L4.5 Level & L5 S1 Level Limping Upon thecal SAC and B/L tracking Nerve Roots with mild B/L Nemo Foraminal Narrowing patient with Radiculopathy both lower limb Muscle Power both Lower Limb Grade 4/5**", with permanent disablement @ 45% for life. It was further submitted that Part-II Order regarding publication of disability in respect of son of the applicant could not be published as applicant failed to submit original copy of medical certificate as per Govt of India, Min of Def letter dated 13.08.2008. It was further submitted that employment/non employment certificate was also not attached alongwith requisite documents.

6. Learned counsel for the respondents further submitted that requisite medical certificate is a mandatory document for publication of occurrence of disability of mentally retarded/physically handicapped child(ren). He however, submitted that since the applicant did not submit the requisite documents inspite of repeated requests, publication of

occurrence of disability of his son is held up for want of said requisite documents.

7. Heard Shri Ashok Kumar, learned counsel for the applicant and Shri Ashish Kumar Singh, learned counsel for the respondents and perused the records.

8. Facts with regard to applicant's enrolment in the Army and his discharge from service are not disputed. It is also not disputed that applicant's son is disabled to the extent of 45%, which has also been authenticated by the medical officer vide medical certificate dated 17.04.2021. We find that there is only one prayer of the applicant that Part-II Order in respect of his disabled son be published so that he could get pensionary benefits after demise of parents.

9. In the emerging facts and circumstances of the case, the question to be answered by our judicious conscience is whether the Part-II Order can be ordered for publication at this stage or not keeping in view the objections raised by the respondents.

10. It is submitted that the respondents had asked original medical certificate as per format issued vide letter dated 13.08.2008 in addition to employment/non employment certificate in respect of applicant's son duly signed by Tehsildar as averred in Para 13 of the counter affidavit. Perusal of record shows that the respondents have never denied publication of Part-II Order with regard to applicant's son. We find that applicant has provided the following documents vide

letter dated 19.03.2022 (Annexure-7) which are required for publication of Part-II Order:-

- (i) Non employment certificate issued by Tehsildar.
- (ii) Non marriage certificate issued by Tehsildar.
- (iii) Original disability certificate issued by Chief Medical Officer, Kanpur District.

11. On careful consideration of the above aspect of the matter with due application of mind, we fail to ignore the fact that it is a case of a disabled son of ex-serviceman whose son is 45% disabled due to Locomotor disability as **Diffuse Disc Bulge L4.5 Level & L5 S1 Level Limping Upon thecal SAC and B/L tracking Nerve Roots with mild B/L Nemo Foraminal Narrowing patient with Radiculopathy both lower limb Muscle Power both Lower Limb Grade 4/5**", with permanent disablement. From perusal of record, we find that name of applicant's son is duly entered in his service record and he is eligible for publication of Part-II Order on the basis of medical certificate for disablement issued by the medical officer which is not disputed by the respondents. We are further of the view that even humanitarian grounds it would compel us to consider the case sympathetically in the peculiar facts and circumstances of the present case. We further notice that applicant has provided all relevant documents for publication of Part-II Order in respect of his son but the said documents were returned by the respondents vide letter dated 02.11.2022

(Annexure R-8) with advice to re-submit medical certificate on prescribed form AFMSF-HD (1) mentioning therein correct name and date of birth of disabled child duly countersigned by the specified medical authorities.

12. Annexure R-2 is the copy of medical certificate issued by Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India, Medical Authority, Kanpur Nagar, Uttar Pradesh. The certificate is of 17.04.2021 which clearly shows that Shri Kalyan Nath son of Shri ketaki Ranjan Nath is disabled @ 45% for life. We find that this medical certificate has been issued by a competent authority and it may be accepted for publication of Part-II Order in respect of son of the applicant as correct name and date of birth are already endorsed in the said medical certificate and it has been signed by the competent medical authority.

13. Thus, in the result, Original Application succeeds and is **allowed**. The respondents are directed to publish Part-II Order regarding disability of applicant's son based on documents earlier submitted by the applicant on 19.03.2022 after verifying the antecedents within a period of four months from today. Applicant is also directed to provide requisite documents to AOC Records, PIN-900453, C/o 56 APO if the same are not held with their office.

14. No order as to costs.

15. Miscellaneous application (s), pending if any, stand disposed of.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 05.7.2023
rathore

(Justice Anil Kumar)
Member (J)