

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 267 of 2023**Thursday, this the 20th day of July, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 6493716-F, Ex. Recruit Anil Singh of HQ Wing SC Centre (North), Son of Shri Rajendra Singh, resident of Village & Post Office – Nasada, Tehsil – Narwal, District – Kanpur Nagar (U.P.), Pincode-209401.

..... Applicant

Ld. Counsel for the Applicant : **Shri K.K. Singh Bisht**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, ASC Records (AT), PIN-908493, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj (U.P.)-211014.

..... Respondents

Ld. Counsel for the Respondents. : **Shri J.N. Mishra**, Advocate
Central Govt. Counsel

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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 the respondents to decide the representation dated 14 Nov 2015 {Annexure No. A-1 (ii)} and 24 August 2020 {Annexure No. A-3} preferred by the applicant in compliance of Judgment and order dated 27 October 2015 passed by this Hon'ble Tribunal in Transferred Application No. 1331 of 2010.*
- (b) *Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order passed by respondent No. 3 vide letter No. 6493716/DP/Pen dated 12 April 1999 {Annexure No. A-1 (ii)} rejecting the "disability pension" claim of the applicant.*
- (c) *Issue/pass an order or direction of appropriate nature to the respondents to grant disability pension and the benefits of rounding off from the date of his discharge i.e. 08 March 1998 (F/N).*
- (d) *Issue/pass any other order 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 21.10.1997 and was **invalided out** from service on 08.03.1998 (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, Gaya on 09.01.1998 assessed his disabilities **'HYDROCELE (RT) ICD NO.603'** and **(ii) 'UNDESCENDED TESTIS (RT) ICD NO. 752.5', composite disabilities @NIL** for life and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 16.03.1999 which was communicated to the applicant vide letter dated 12.04.1999. The applicant preferred Petition dated 01.06.2001 which too was rejected vide letter dated 02.08.2001. The applicant preferred representations dated 14.11.2015 and 24.08.2020 but of no avail. 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. 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 **IMB** has opined the disabilities as NANA, the applicant is not entitled to disability pension. The applicant reported to ASC Centre (North) on 22.10.1997 for Basic Military Training and as per existing policy/instruction, Regimental medical Officer, ASC Centre, carried out re-medical examination of the applicant and he was found to be case of aforesaid disabilities. As per the opinion of the Wing Commander NK Das, Surgical Specialist of Military Hospital, Danapur dated 28.11.1997 applicant gives history of having undergone surgery on the (RT) side of Hydrocele on 16.09.1996 at Civil Hospital, Kanpur PHC Bhillorga in Kanpur Dehat. Surgically not acceptable. Recommended category 'EEE'. 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 04 months and 17 days of service. The applicant previously had filed a Civil Writ Petition No. 20411 of 1998 which was transferred to this Tribunal and was registered as T.A. No. 1331 of 2010 which was also disposed of by this Tribunal vide order dated 27.10.2015 observing that the discharge order does not suffer from any impropriety or illegality. However, the applicant was given liberty to submit Statutory Complaint for grant of disability pension and respondents were directed to dispose of the said complaint

within three months of its submission. The applicant did not prefer any Statutory/Ordinary Complaint within the given time. After a long gap of two years and one month the applicant submitted personal complaint dated 24.08.2020 for grant of disability pension which was forwarded to the Competent Authority vide letter dated 10.10.2020. The outcome of the same is still awaited. He 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 21.10.1997, and the diseases applicant were found to be suffering with in medical test first started prior to joining the service.

7. In the above scenario, we are of the opinion that since the diseases have started prior to 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 diseases 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 diseases manifested prior to 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 Narsingh Yadavvs 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 Umesh Chandra Srivastava)
Member (J)

Dated : 20 July, 2023

AKD/-