

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 166 of 2019**Thursday, this the 18<sup>th</sup> day of February, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Ex Rect No. 3184895 VINOD KUMAR  
S/o Shri Sant Lal  
R/o Vill – Baprola, PC – Najafgarh  
Distt – Delhi  
Residing now at C/o Dr Raees, K-14 Rajbhawan Parisar  
Rajbhawan, Lucknow (UP)**.... Applicant**Ld. Counsel for the Applicant : **Shri Virat Anand Singh**, Advocate.

Versus

1. Union of India and others through The Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Air Staff, Integrated HQ of MoD (Air Force), DHQ PO, New Delhi-110011.
3. CRO, JAT Records, JAT Centre Bareilly.
4. PCDA, Draupadi Ghat, Allahabad.

**... Respondents**Ld. Counsel for the Respondents : **Shri Namit Sharma**,  
Central Govt Counsel.**ORDER**

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

- “(i) To direct the respondents to consider Applicants Disability STRESS FRACTURE TIBIA RT UPPER AS Attributable to service and also aggravated to service and thus honour his disability pension @ 20% for two years with interest since date of discharge 06 Sept. 1992.

- (ii) To direct the respondents to conduct Re-survey medical board to ascertain any psycartric disability and its percentage.
- (iii) To direct the respondents to include the new disability percent and re-calculate composite disability and issue a fresh PPO after rounding off the disability.
- (iv) To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.
- (v) Allow this application with cost.”

2. Brief facts of the case are that the applicant was enrolled in the Indian army on 04.05.1991 and was invalided out of service w.e.f. 05.09.1992 in low medical category 'EEE' under Army Rule 13(3) III (iv) due to disability “**FIBROUS DYSPLASIA RIGHT TIBIA (723)**” and assessed disability @ 20% for two years and considered it neither attributable to nor aggravated by military service (NANA). The applicant submitted a petition dated 11.06.1993 seeking his pension papers to the respondents and he was replied by the respondents that his case is under consideration with higher authorities. Thereafter, applicant served a petition dated 21.07.1993. In reply he was communicated that he is not entitled to grant pensionary benefits as the disease existed prior to his enrolment vide letter dated 11.02.1994. The applicant filed CWP No. 4017/2002 in the Hon'ble Delhi High Court at New Delhi for non grant of disability pension. The case was disposed of on 06.03.2003 with direction to upheld the findings of medical board by which the applicant was to be physically examined and therefore, he was examined and a speaking order notifying full facts of the case and reason for non entitlement of

disability pension was issued to the applicant vide order dated 26.02.2004. Feeling aggrieved with speaking order, the applicant again filed a CWP No. 4486/2004 before the Hon'ble Delhi High Court. The case was listed before the Court and it was disposed of on 17.02.2004 with direction to the respondents to furnish records of medical board proceedings and relevant documents of the applicant within three weeks. In compliance to Court order dated 17.02.2004, the applicant was provided CTC of Invaliding Medical Board proceedings vide letter dated 11.03.2005. Thereafter, after a lapse of 11 years, the applicant served a representation dated 27.01.2016 through his Advocate, Shri SM Hooda for grant of disability pension from the date of discharge. In turn, the applicant was communicated the reason for non grant of disability pension vide letter dated 10.03.2016. Instead preferring an appeal, the applicant again submitted representations dated 26.03.2016 and 01.06.2016 addressed to the Hon'ble Defence Minister which were received through Army Headquarters and accordingly applicant was communicated to submit First Appeal through JAT Records vide letters dated 18.05.2016 and 14.06.2016. The applicant filed first appeal dated 24.03.2017 which was replied by the respondents that appeal being time barred for more than five years will not be accepted. Being aggrieved by denial of disability pension, applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition. It was

further pleaded that a person 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. In this regard, he submitted that for grant of disability pension the law is settled by the Hon'ble Apex Court in the case of ***Dharambir Singh vs Union of India & Ors*** (2013) 7 SCC 316, ***Veer Pal Singh vs. Secretary, MoD*** (2013) 8 SCC 83, ***Union of India and others vs. Rajbir Singh*** (2015) 12 SCC 264 and ***Union of India vs. Manjeet Singh (2015) 12 SCC 275*** and pleaded for disability to be considered as attributable to or aggravated by military service. He also prayed for disability pension to be granted @ 20% to be rounded off to 50%.

4. On the other hand, Ld. Counsel for the respondents submitted that disability of applicant has been considered as neither attributable to nor aggravated by military service by the medical board, hence in view of Rule 173 and 178 of Pension Regulation for the Army, 1961 (Part-1), he is not entitled for disability pension. The Invaliding Medical Board has recommended applicant's disability as neither attributable to nor aggravated by military service and existed before enrolment and recommended to be invalided out of service in category 'EEE', hence, he is not entitled for disability pension.

5. We have heard learned counsel for both sides and perused the material placed on record.

6. On careful perusal of the records and medical documents, it has emerged that applicant was enrolled on 04.05.1991 and the disease had first started on 12.02.1992 during training period. After a detailed investigations by the Classified Specialist (Surg & Ortho), applicant was not found fit to continue training in service and was recommended by the Invaliding Medical Board to be invalided out of service in medical category 'EEE'.

7. The applicant was invalided out of service being low medical category EEE as recommended by IMB. Further, the competent authority while adjudicating the disability pension claim of the applicant has also examined applicant's disability in the light of relevant rules and finally rejected being neither attributable to nor aggravated by military service and disability existed before enrolment. We are in agreement with the opinion of IMB proceedings. Additionally, a recruit is akin to a probationer and hence prima facie the respondents as an employer have a right to discharge a recruit who is not meeting the medical requirement of military service. We are in agreement with the opinion of IMB that the applicant's disability is neither attributable to nor aggravated by military service and he is not entitled to disability pension.

8. Apart from it, in identical factual background this Tribunal dismissed T.A. No. 1462/2010, **Bhartendu Kumar Dwivedi vs. Union of India and others**, vide order dated 23.05.2011 wherein applicant was enrolled on 21.01.2000 and was discharged on 27.04.2000 as he was suffering from 'Schizophrenia'. Said disability

was assessed @ 80% for two years and it was opined by the Medical Board to be neither attributable to nor aggravated by military service. Said order of this Tribunal has been upheld by the Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 preferred against the aforesaid order, has been dismissed on delay as well as on merits vide order dated 20.11.2017.

9. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

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

Dated: February, 2021

SB