

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 70 of 2020**Monday, this the 1st day of March, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 20000311-H Ex Rect/Clk (SD) Jaideep Singh Rawat
of Dogra Regimental Centre
C/o 56 APO
So/ Shri Govind Singh Rawat
R/o Vivek Vihar, Lane No. 4, Near Khukri Factory Nakronda Road,
Balawala, District – Dehradun, Pin – 248161 (Uttarakhand)

.... ApplicantLd. Counsel for the Applicant : **Shri K.K.S. Bisht**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, The Dogra Regiment, PIN-900235, C/o 56 APO.
4. Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad (UP) - 211014.

... RespondentsLd. Counsel for the Respondents : **Ms. Anju Singh**,
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:-

- “(a) Issue/pass an order or direction to the respondents to summon the rejection order passed by Records, respondent No. 3 vide letter No. Pen/D/11816/2000311

dated 18 Dec 2010 and to quash/set-aside the order dated 18 Dec 2010 vide which the disability pension claim of the applicant was arbitrarily and illegally rejected by respondent No. 3.

- (b) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order passed by the Appellate Committee on First Appeals 9ACFA) vide letter No. B/40502/1990/11/AG/PS-4 (Imp-II) dated 15 Sep[2011 (Annexure No. A-1(i) rejecting the disability pension claim of the applicant.
- (c) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order vide letter No. B/38046/590/2012/AG/PS-4 (2nd Appeal) dated 27 August 2014 (Annexure No. A-1(ii) passed by the second Appellate Committee on Pension 9SACP) rejecting the disability pension claim of the applicant.
- (d) Issue/pass an order or direction of appropriate nature to the respondents to grant 20% disability element of disability pension which after rounding of will be 50% for life from the date of his discharge i.e. 01.09.2010.
- (e) issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (f) Allow this application with costs.”

2. Brief facts of the case are that the applicant was enrolled in the Indian army on 09.06.2009 and was invalided out of service w.e.f. 01.09.2010 in low medical category 'P5' under Army Rule 13(3) III (iv) due to disability “**ACYANOTIC CONGENITAL HEART DISEASE – ATRIAL SEPTAL DEFECT**” assessed @15-19% for life and considered it neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide order dated 18.12.2010. The petition dated 27.06.2011 preferred by

mother of the applicant was replied by Records vide letter dated 12.07.2011 informing the reasons for non grant of disability pension. First appeal of the applicant was rejected by Appellate Committee vide order dated 15.09.2011. Second appeal of the applicant was also rejected by Appellate Committee vide order dated 04.09.2012. Being aggrieved, 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 & Others*** (2013) 7 SCC, 316 and ***Sukhvinder Singh vs. Union of India & Ors*** (Civil Appeal No. 5605 of 2010), decided on 25.06.2014 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 of Pension Regulation for the Army, 1961 (Part-1) and Para 81 of Pension Regulation for the Army, part-1 (2008), he is

not entitled for disability pension. He further submitted that IMB has opined that it is a congenital disease of heart and has no causal connection with service. The Invaliding Medical Board has recommended applicant's disability below 20% as neither attributable to nor aggravated by military service and also not connected with service, 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 09.06.2009 and the disease had first started on 01.07.2010 during trade (Clerk) training period. After a detailed investigations by the classified specialist (Medicine) & Cardiologist, 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 'P5' due to congenital disease.

7. The applicant was invalided out of service being low medical category 'P5' 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. 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: March, 2021

SB