

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 90 of 2018

Thursday, this the 25th day of February, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Umesh Oraon Army No. 6503038H Ex Rect/ASH
Village – Taranga Domba Toli, P.S. Chanho,
Post – Choreya, District – Jharkhand – 835214
Present Address : Nai Basti, Rahim Nagar,
Mahanagar, Lucknow (UP)

.... **Applicant**

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

Versus

1. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
2. Integrated H.Q. of Mod. (Army), Adjutant General's Branch, Addl. Dte Gen MP/8 (I or R), West Block, R.K. Puram, New Delhi.
3. Commanding Officer 1, Trg Bn. (AT), 1 A.S.C. Trg Centre Pin-900493 Care of 56 APO.
4. P.C.D.A. (P) Draupadi Ghat, Allahabad (UP).

..... **Respondents**

Ld. Counsel for the Respondents : **Shri Ashish Kumar 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:-

- "i. The Hon'ble Court may kindly be pleased to quash the order dated 4 May 2017 rejection of appeal by the opposite party with the direction that invaliding disability

CSOM (L) (O.P.T.D. H-66.1) is neither attributable or aggravated by Military service is contained as Annexure No.1 with the petition.

- ii. The Hon'ble Court may kindly be pleased to issue direction the opposite party to provide disability pension to the applicant since discharge from Army service with 18% rate of interest as disability arises during service as it has been recommended by the Medical Board assessed 20% disability arises during Army Service.
- iii. Any such Hon'ble Tribunal kindly be please to pass any order or direction which this Hon'ble Tribunal may deem fit and proper on the basis of circumstances of the case in favour of the applicant."

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 26.12.2013 and was invalided out of service w.e.f. 20.09.2014 in low medical category under Army Rule 13(3) III (iii) due to disability "**CSOM (Chronic Suppurative Otitis Media) (L)-OPTD (H-66.1)**", assessed @ 20% for life and considered it neither attributable to nor aggravated by military service (NANA). The disability pension claim of the applicant was rejected vide order dated 11.05.2005. 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 stress and strain of military service. 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***, reported in 2013 SCC 316 and ***Sukhvinder Singh vs. Union of India & Ors***, reported in 2014 STPL (WEB) 468 SC and pleaded for disability to be considered as attributable to or aggravated by military service. He further submitted that as per para 95 of Pension Regulations for the Army, 2008 and Section 173 of Army Pension Regulations 1961, applicant is entitled for disability pension. He prayed for disability pension to be granted @ 20%.

4. Learned ccounsel for the applicant further submitted that when the case of fraudulent enrolment came to the notice of Army authorities, they should have lodged a FIR for production of fake/forged medical documents and simultaneously an inquiry should have also been conducted to find out the guilty persons who were associated with this racket of fraudulent enrolment, but nothing was done.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Army on 26.12.2013 from Army Recruiting Office, Ranchi and thereafter he reported to ASC Centre (North) on 29.12.2013 and subsequently he was sent to No. 1 Training Battalion on 29.12.2013 and his basic military training commenced on 24.01.2014. While the applicant was undergoing basic military training, an intimation was received from Army Recruiting Office, Ranchi vide their letter dated 30.04.2014 that applicant had been enrolled by them based on a

fake/forged medical review certificate of Military Hospital, Namkum. A detailed scrutiny of his medical documents revealed that applicant has indeed been declared permanently unfit (PUF) by Regimental Medical Officer (RMO), Ranchi due to disease CSOM (Chronic Suppurative Otitis Media) and was referred to Military Hospital, Namkum for medical review under his own arrangements. The applicant reported back to Army Recruiting Office, Ranchi with forged/fake Review Certificate of Military Hospital, Namkum which showed him to be FIT. Accordingly, he was enrolled by Army Recruiting Office, Ranchi and was dispatched to ASC Centre (North) to undergo Basic Military Training. It was later clarified by Military Hospital, Namkum that applicant had indeed been declared UNFIT alongwith other 10 candidates at the time of enrolment, however, they had submitted a fake/forged Review Medical Certificate of Military Hospital, Namkum to Army Recruiting Office, Ranchi. In order to confirm the report of Military Hospital Namkum and Army Recruiting Office, Ranchi, the applicant was directed to report Command Hospital Air Force, Bangalore for requisite medical test to ascertain the facts vide ASC Centre North letter dated 30.06.2014. Accordingly, a thorough medical check up of the applicant was carried out on 03.07.2014 at Command Hospital Air Force, Bangalore by an ENT Specialist and he was once again declared permanently unfit for the Army being a case of CSOM. Accordingly, he was recommended to be invalided out from service and was invalided out from service on 20.09.2014. It has been admitted by learned counsel for the respondents that neither any FIR was lodged nor any inquiry has been conducted with regard to recruitment of applicant on the basis of fake/forged medical documents.

6. Ld. Counsel for the respondents further 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), he is not entitled for disability pension. He further submitted that IMB has opined that applicant contracted the disease prior to joining the service. The Invaliding Medical Board has recommended applicant's disability as neither attributable to nor aggravated by military service and also not connected with service, hence, he is not entitled for disability pension.

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

8. On careful perusal of the records and medical documents, it has emerged from Primary Medical Examination Report that applicant was medically examined by Major R Bhattacharjee, Recruiting Medical Officer (RMO) at the time of recruitment in September, 2013 and was found PUF (Permanent Unfit) as mentioned in Ser 20 of Primary Medical Examination Report for CSOM. Thereafter, on the basis of a Review Certificate dated 03.10.2013, signed by ENT specialist and declaring the applicant 'FIT', applicant was recruited by Army Recruiting Office, Ranchi on 26.12.2013 and was despatched to ASC Centre (North) where he reported on 29.12.2013. The matter of fake/forged medical documents came to the fore when Army Recruiting Office, Ranchi informed ASC Centre vide letter dated 30.04.2014. Only then was he examined by ENT specialist of Command Hospital, Air Force, Bangalore and was found suffering

from same disease CSOM which was detected by RMO at the time recruitment medical examination and accordingly, he was recommended to be invalidated out from service. Hence, the applicant was invalidated out from service on the basis of recommendation of IMB and not for fake/forged medical documents.

9. It is pertinent to mention here that the contention of learned counsel for the applicant was that disease was contacted during training on 03 July 2014 as per IMB. We find that this is the particular date on which the applicant's thorough medical check up was carried out at Command Hospital Air Force, Bangalore as per direction of ASC Centre North vide their letter dated 30.06.2014, and not the date of contracting the disease.

10. The applicant was invalidated out of service in low medical category S1H5A1P1E1 (H5) being a case of CSOM 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 it being neither attributable to nor aggravated by military service. We are in agreement with the opinion of IMB proceedings. The Court is also of the view that if there was a proof of fraudulent enrolment based on fake/forged medical documents, then applicant should have been dismissed from service then and there on the basis of these medical documents and that Army authorities should not have waited till July 2014 to conduct a thorough medical test, when his disease CSOM was detected in the initial medical examination in Sept. 2013 at the time of recruitment.

11. 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.

12. 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.

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

14. No order as to costs.

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

Dated: February, 2021
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