

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1 (E. Court)

O.A. No. 541 of 2019 with M.A. No. 819 of 2019

Ex Nk Rakesh Kumar Tiwari
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>22.02.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Heard Shri Parijaat Belaura, learned counsel for the applicant and Shri Devesh Kumar Mishra, learned counsel for the respondents.</p> <p style="text-align: center;"><u>M.A. No. 819 of 2019</u></p> <p>2. The Original Application has been filed with delay of 10 years, 10 months and 05 days.</p> <p>3. Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.</p> <p>4. Per contra, learned counsel for the respondents submits that explanation of delay offered by the applicant is not sufficient as delay has not been satisfactorily explained on day to day basis.</p> <p>5. Considering that in pensionary matters bar of limitation is not applicable and grounds shown for delay are genuine and sufficient, delay deserves to be condoned.</p> <p>6. Accordingly, delay is condoned.</p> <p>7. The O.A. has already been admitted and registered vide order dated 15.10.2019.</p>

O.A. No. 541 of 2019

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

“(a) To set aside order dated 04.09.2018 (passed in Second Appeal) and Order dated 10.02.2017 (passed in First Appeal) (Anx-1) and (Anx-2).

(b) To pay disability element of invalid pension @ 50% from the date of invalidment of applicant i.e. 16.04.2015 till it is actually paid after giving the benefit of GOI, MoD letter 31.01.2001 as well as regulation 98 (c) of Pension Regulations for Army Part-I (2008).

(c) To pay arrear of disability pension along with 12% interest from the date of his release i.e. 16.04.2015 till it is actually paid.

(d) Any other suitable relief this Hon'ble Court deems fit and proper may also be granted.

9. Brief facts of the case are that the applicant was enrolled in Army on 25.06.2002. The applicant was invalided out from service on 15.04.2015 in low Medical Category 'S5' under Rule 13(3) III (iii) of the Army Rules, 1954. At the time of invalidment from service, the Invaliding Medical Board (RMB) held at Military Hospital, Dehradun on 18.12.2014 assessed his disability '**ALCOHOL DEPENDENCE SYNDROME**' @ 40% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service and not connected with service due to habitual disorder. The applicant approached the respondents for grant of disability pension which was rejected vide their letter dated 20.08.2015. Thereafter first and second appeals were also rejected vide orders dated 10.02.2016 and 04.09.2018 respectively. He is in receipt of service element of pension vide PPO No. D/12404/2015 dated 30.10.2015. Applicant has filed this O.A. for grant of disability element of pension.

10. Learned counsel for the applicant pleaded that the applicant was enrolled in the Army in medically and physically fit condition and there is no note in the service documents that he was suffering from any disease at the time of entry in service. He further pleaded that since the applicant was

invalided out from service in low Medical Category on medical grounds for the disability '**ALCOHOL DEPENDENCE SYNDROME**' without completing terms of engagement, therefore, he is entitled to disability element of pension with effect from his date of discharge. Learned counsel for the applicant has relied upon this Tribunal's order dated 26.03.2019 delivered in O.A. No. 266 of 2018 titled **Ex Sep Jadhav Nilesh Dinkar vs Union of India & Ors**, and submitted that in light of aforementioned judgment applicant is entitled to disability element of pension.

11. On the other hand, learned counsel for the respondents contended that disability of the applicant has been regarded as NANA by the IMB, hence applicant is not entitled to disability pension. He pleaded for dismissal of the Original Application. Respondents' learned counsel has relied upon Coordinate Bench, Jaipur order dated 17.05.2012 delivered in O.A. No. 104 of 2011 titled **Ex Sep Umrao Singh vs Union of India & Ors**, and submitted that applicant is not entitled to disability element of pension in light of aforementioned judgment. He pleaded for dismissal of O.A.

12. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the IMB proceedings as well as the records. The question which needs to be answered by us is whether the disability of applicant i.e. 'Alcohol Dependence Syndrome' is attributable to or aggravated by military service?

13. We have given our thoughtful consideration to the issues raised by the learned counsel for the applicant. On careful analysis, we find that alcohol dependence syndrome is primarily a disease where an individual cannot control his excessive drinking habits. This disease leads to excessive consumption of alcohol on duty resulting in poor performance during discharge of official duties. It is also very clear that drinking alcohol excessively is a matter of personal choice. It has nothing to do with military duty.

14. It is also well known that all efforts are made by military doctors and the

organization to help a soldier who has become a victim of 'Alcohol Dependence Syndrome' and only when all efforts fail, the soldier is invalided out on ground of 'Alcohol Dependence Syndrome'.

15. We take note of opinion of Maj Ankit Singal, Graded Specialist in Psychiatry of Military Hospital, Meerut dated 20.11.2014 on applicant as under:-

"However in view of continued alcohol abuse, a derogatory unit report which mentions uncontrolled drinker and his deteriorating performance, poor motivation exhibited by indl and he had been observed as a case of alcohol dependence syndrome for more than 96 weeks, having repeated relapses in spite of being planned for IMB and comorbid concurrent cannabis , Opioids and BZDs abuse he is unlikely to be a fit soldier and not going to be useful to the organization, rather is likely to be a liability as evident from longitudinal history from documents as his behaviour hence as per guidelines given in AO 9/2007 para 23(d) and DGAFMS Memorandum 171/2002 para 9(a) (iii) he is recommended to be invalided out of service in S5 as a case of alcohol dependence syndrome."

We also take note of Senior Adviser, Psychiatry of Command Hospital, Lucknow dated 10.03.2015 on applicant as under:-

"This 32 yrs old NCO is a case of Alcohol Dependence Syndrome-Relapse. Perusal of medical documents revealed that indl has had multiple relapses to an alcohol dependent state inspite of adequate therapy & he has continued to abuse alcohol alongwith other drugs (Opioids & Benzodiazepines) leading to significant impairment in his socio-occupational functioning.

I agree and concur with the opinion and disposal given by Maj Ankit Singal, Gd Specialist Psychiatry of MH Meerut, dt 20 Nov 2014. The disposal is in consonance with the current regulations on the subject".

16. The above recommendations and findings clearly indicate that applicant is a habitual drinker and all efforts made by respondents for his treatment have become futile.

17. In the instant case, the Invaliding Medical Board has denied attributability and aggravation factor of disability 'Alcohol Dependence Syndrome' to military service. In this regard, the Hon'ble Supreme Court in **Secretary, Ministry of Defence & Ors vs Damodaran AV & Ors** decided on 20.08.2009 in Civil Appeal No 5678 of 2009, **Union of India & Ors vs Baljit Singh**, reported in (1996) 11 SCC 315, **Union of India & Ors vs Dhir Singh**

China, Col (Retd), reported in (2003) 2 SCC 382 have held that Medical Board is a duly constituted body and findings of the board should be given due weightage and credence. Since the Medical Board has denied any connection of disability with military service, hence, the applicant's disability is treated as neither attributable to nor aggravated by military service.

18. Considering all issues, we are of the considered opinion that learned counsel for the applicant has failed to make out any case in his favour. We agree with the opinion of IMB that the disease of applicant is neither attributable to nor aggravated by military service. Thus, considering that due process has been followed by Army in invaliding applicant out of service, we decline to interfere with this process or provide any other relief to applicant.

19. In view of the above, the Original Application No 541 of 2019 deserves to be dismissed, hence **dismissed**.

20. No order as to costs.

21. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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