

E-Court No- 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 564 of 2021**

Thursday, this the 03rd day of March, 2022

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

No.10505161M Ex Sep/Chef Community Manoj kumar Prajapati
 S/o Shri Ramesh Chandra Prajapati, R/o Village Kasimbagh Post-
 Fatehgarh, Dist:Farrukhabad (U.P)-209601.

..... **Applicant**

Learned counsel for the Applicant : **Shri Pankaj Kumar Shukla,**
Advocate.

Versus

1. The Union of India Rep by the Secretary, Govt. of India
 Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated headquarters of
 MoD (Army) Post –DHQ, New Delhi-110011.
3. The Officer-in-charge, Records, The Jat Regiment, Pin
 900496 C/o 56 APO.
4. PCDA(P) (Army), Draupadhi Ghat, Allahabad (U.P)-
 212114.

.....**Respondents**

Learned counsel for the Respondents. : **Ms. Preeti Mala,**
Central Govt. Counsel

ORDER

“Per Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”

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

A. To quash and set aside the Respondent No.3 letter no. 10505161 / DP/JR dated 07Jan 2013 (Annexure A-1 of instant O.A. & Impugned Order.

B. To issue /pass an order or directions of appropriate nature to the respondents to grant disability consisting of service element and disability element to the applicant from the date of his discharge from service 09.09.2012 and to pay the arrears along with suitable rate of interest deem fit by this Hon’ble Tribunal.

C. To grant the benefit of rounding off of the disability pension from 1-5 % to 50% in terms of Govt of India letter dated 31 Jan 2001 and to pay the arrears along with suitable rate of interest as deem fit by this Hon’ble Tribunal.

D. Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.

2. Rejoinder affidavit filed by the applicant is taken on record.

3. Briefly stated facts of the case is that applicant was enrolled in the Territorial Army on 07.11.2001 and was discharged on 09.09.2012 in Low Medical Category under TA Rule 14 (b) (ii) of TA Regulations 1948. Applicant was discharged from service after completing 09 years and 202 days of embodied service and 01 year and 147 days of disembodied service. At the time of discharge, the Release Medical Board (RMB) held at 158 Base Hospital assessed his disability ‘**IMMUNE SURVEILLANCE**’ @ 1- 5% for life opined

the disability to be neither attributable to nor aggravated (NANA) by military service. The applicant's claim for grant of disability pension was rejected vide letter dated 07.01.2013. The applicant preferred First Appeal vide letter dated 28.09.2020 for grant of service element and disability pension which has not yet been decided by the respondents. It is in this perspective that the applicant has preferred the present Original Application for grant of service element and disability pension. .

4. Learned Counsel for the applicant pleaded that the applicant was discharged from service in low medical category after completing 09 years and 202 days of embodied service and 01 year and 147 days of disembodied service. On 13.08.2010, applicant while posted in Field Area at Assam was detected HIV+ve '**IMMUNE SURVEILLANCE**'. 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 grant of disability pension to the applicant from the date of discharge and it rounding of.

5. On the other hand, Ld. Counsel for the respondents submitted that claim of applicant for disability pension was rejected by the respondents as the disability of the applicant was neither attributable to nor aggravated (NANA) by military service and the disability from which husband of the applicant was suffering has no connection with military duty, hence the applicant is not entitled to disability pension. He further accentuated that the applicant is not entitled to disability pension in terms of Rule 173 of Pensions Regulations for the Army, 1961 (Part-I), which stipulates that, “unless otherwise specifically provided, disability pension 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 and is assessed at 20% or over, but in the instant case the disability of the applicant’s husband has been assessed @ 1-5% and considered as NANA by duly constituted Invaliding Medical Board , therefore, the husband of the applicant is not entitled to disability pension. He pleaded that in the facts and circumstances of the case, as stated above, Original Application deserves to be dismissed.

6. We have heard Ld. Counsel for the parties and perused the material placed on record.

7. On careful perusal of the documents, it has been observed that the applicant was enrolled on 07.11.2001, and he was invalided out from service with effect from 09.09.2012, i.e. after 09 years and 202

days of embodied service. There is no dispute that the incumbent was invalided out from service having been placed in the low medical category for '**IMMUNE SURVEILLANCE**', which is a sexually transmitted disease. In fact such disease has no relation with the service in the Army nor by any stretch of imagination can be said to have been aggravated by military service. In this regard we are clear that Para 6 of Chapter V- Miscellaneous Provisions of Guide to Medical Officers Military Pensions 2002 disallows the award of compensation for disability arising from sexual transmitted disease. The said para is reproduced under for ease of reference:-

Chronic Poisoning, Intoxication and Sexually Transmitted Diseases

6. Compensation cannot be awarded for any disablement or death arising from intemperance in the use of alcohol, tobacco or drugs, or from sexually transmitted diseases, as these are matters within the member's own control.

8. Consequently the present case does not fall within the category eligible for grant of disability pension to an incumbent under the provision of Rule 173 of the Army Pension Regulation read in conjunction with Guide to Medical Officer, Military Pensions 2002. In a similar matter in **O.A. No 239 of 2011, Neelam Singh Vs Union of India**, decided on 15 Sep 2021, this Tribunal has dismissed the

