

**Court No. 1 (E. Court)****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****Original Application No. 745 of 2021**Thursday, this the 03<sup>rd</sup> day of March, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 5248088L, Ex. Hav. Kamal Dev Yadav, son of Late Sri Babu Lal Yadav, R/o : Village &amp; P.O. : Bargadawa Haraiya, P/S : Puranderpur, Tehsil : anand Nagar, District : Maharajganj (U.P.).

..... **Applicant**Ld. Counsel for the: **Shri Vijay Kumar Pandey**, Advocate and  
Applicant **Shri Girish Tiwari**, Advocate  
Versus

1. Union of India, through Secretary to the Government of India, Ministry of Defence, South Block, R.K. Puram, New Delhi-110011.
2. Dir. PS-4, AG's Branch, HQs, DHQ PO, New Delhi-110011.
3. OIC Records, Records 39 GTC, Varanasi Cantt.-221002.
4. ACDA, PAO (Ors), 39 GTC, Varanasi Cantt.-221002.

.....**Respondents**Ld. Counsel for the Respondents. : **Shri Amit Jaiswal**, Advocate  
Central Govt. Counsel**ORDER****"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"**

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

- (i) *That this Hon'ble Tribunal may kindly be pleased to quash the impugned rejection order of disability pension dated 23.07.2019, contained as annexure no. 1 to the original application, passed by opposite party no. 3, and also quash the impugned order after summoning the same, if any, passed by the opp. party no. 2 in pursuance of appeal dated 02.09.2019/06.09.2019, and grant the disability pension @50% to the appellant for life w.e.f. 01.08.2019 to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment in the interest of justice.*
- (ii) *That this Hon'ble Tribunal may kindly be pleased to award the cost Rs.20,20,000/- (Rs. Twenty Lac and Twenty Thousand Only) to the applicant against the opposite parties and allow the same.*
- (iii) *That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Army on 01.10.1995 and was discharged from service on 31.07.2019 (AN) in Low Medical Category after rendering 23 years, 10 months of service under Rule 13 (3) Item III (iii) (a) (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical

Board (RMB) held at 164, Military Hospital, C/o 99 APO on 08.06.2019 assessed his disabilities (i) '**DYSLIPIDEMIA (E78.5)**' @6-10% for life and (ii) '**ALCOHOL DEPENDENCE SYNDROME (F 10.2,)**' @6-10% for life, composite disabilities @20% for life, and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability element of disability pension was rejected vide letter dated 23.07.2019. The applicant preferred First Appeal dated 02.09.2019/06.09.2019 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The diseases of the applicant were contracted during the service, hence they are attributable to and aggravated by military Service. He further pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension as well as arrears thereof, as applicant is also entitled to disability element of disability pension and its rounding off to 50%.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and

submitted that since the disabilities of the applicant have been regarded as NANA by the RMB, therefore, condition for grant of disability element of pension does not fulfil in terms of Pension Regulations for the Army, 2008 (Part I) and, therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He pleaded for dismissal of Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB proceedings as well as the records. The sole question which needs to be answered by us is whether the disabilities of the applicant i.e. '**DYSLIPIDEMIA (E78.5)**' and '**ALCOHOL DEPENDENCE SYNDROME (F 10.2,)**' are attributable to or aggravated by military service?

6. We have given our thoughtful consideration to the issues raised by the learned counsel for the applicant. On careful analysis, we find that first disease i.e. '**DYSLIPIDEMIA (E78.5)**' is a life style disease and second disease i.e. '**ALCOHOL DEPENDENCE SYNDROME (F10.2)**' is primarily a disease where an individual cannot control his excessive drinking habits. These diseases lead to being drunk while on duty and poor performance during discharge of official duties. It is also very clear that drinking Alcohol and exercise of discipline and moderation while drinking is a matter of personal choice.

7. It is also well known that all efforts are made by Army doctors and the organization to help a soldier who has become a victim of '**ALCOHOL DEPENDENCE SYNDROME (F 10.2,)**' and only when all efforts fail the soldier is discharged from service on ground of said disease.

8. Further, Para 6 of Chapter – V of Guide to Medical Officers (Military Pensions), 2002 provides that "*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. It follows that where alcohol, tobacco or drugs or sexually transmitted diseases have aggravated an accepted disability, it is necessary to exclude the effect thereof in assessing the disablement ascribable to service condition.*"

9. In view of above, as far as attributability of the of disabilities are concerned, we agree with the opinion of the RMB that these disease are neither attributable to nor aggravated by military service.

10. Considering all issues, we are of the considered opinion that Ld. Counsel for the applicant has failed to make out any case in his favour. We agree with the opinion of RMB that the diseases of the applicant were neither attributable to nor aggravated by military service. Thus considering that due process has been followed by Army in discharging the applicant from service, we are

