

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 103 of 2017

Vishwa Jeet Singh

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>29.11.2018</u> <u>Hon'ble Mr. Justice SVS Rathore, Member (J)</u> <u>Hon'ble Air Marshal BBP Sinha, Member (A)</u></p> <p>Judgment pronounced.</p> <p>O. A. No. 103 of 2017 is dismissed.</p> <p>For orders, see our judgment and order of date passed on separate sheets.</p> <p>Misc. Applications, pending if any, shall be treated as disposed of accordingly.</p> <p>(Air Marshal BBP Sinha) (Justice SVS Rathore) Member (A) Member (J)</p> <p>gsr</p>

RESERVED

Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 103 of 2017

Thursday, this the 29th day of November 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

8950964-A Ex AC (U/T) Vishwa Jeet Singh, S/O Shri Parmatma Singh, R/O Village & Post-Tengarhin, Distt-Ballia (UP), PIN-277201.

..... Applicant

Ld. Counsel for the: **Shri Shailendra Kumar Singh,**
Applicant Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence (Air Force), South Block, New Delhi.
2. Chief of Air Staff, Air HQrs (Vayu Bhawan), New Delhi-110011.
3. Director, Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi-110010.
4. O/o Jt CDA (AF), C/O AFCAO, Subroto Park, New Delhi-110010.
5. PCDA (Pensions) (IAF), Draupadi Ghat, Allahabad (UP)-211014.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**
Central Govt Counsel.

ORDER

"Per Hon'ble Air Marshal BBP Sinha, Member (A)"

1. 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 quash or set-aside the Respondent No 3 letter dated 02 Sep 2013 (Annexure A-1 & Impugned Order).*
- (b) *To summon the decision of applicant's appeal dated 30 Jun 2016 as more than six months have lapsed since the receipt of same by the respondents and no decision has been communicated to the applicant till filing of the instant Original Application.*
- (c) *To issue order/direction of appropriate nature to the respondents to declare applicant's disability pension to him from the date of discharge/invalidment from service i.e. 27 Jun 2013, @ 40% for life which should stand rounded off to 50% in terms of Govt of India letter dated 31 Jan 2001 alongwith suitable rate of interest on arrears as deemed fit and proper by this Hon'ble Tribunal.*
- (d) *Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*

2. Brief facts which are necessary for disposal of the matter are recapitulated as under:

The applicant was enrolled in the Indian Air Force (IAF) on 02.01.2013 as an airman. At the time of joining service the applicant was put through the medical test and was found medically fit. According to Ld. Counsel for the applicant, while undergoing joint basic phase training (JBPT) the applicant got sprain in his right leg during the cross country. The applicant was sent to Station Medical Centre (SMC) where the Medical Officer (MO) observed the applicant's eyes to be yellowish and advised to undergo blood test which revealed normal jaundice with bilirubin 1.5. Later, on thorough investigation in Military Hospital (MH) and City Hospital, Belgaum found applicant's right kidney small in size and he was referred to Command Hospital, Pune for opinion and further treatment by Nephrologists. The Nephrologists placed the applicant in P5 medical category and recommended for invalidment. Invalid Medical Board (IMB)

was conducted on 02.05.2013 which opined the disease as congenital in nature and recommended the applicant to be invalided out of service with 40% disablement for life neither attributable to nor aggravated (NANA) by Air Force Service. Therefore, the applicant was invalided out of service w.e.f. 27.06.2013. Earlier the applicant had filed O.A. No. 138 of 2015 for re-instatement into service but it was rejected vide order dated 31.03.2016.

The operative portion of the aforesaid judgment is excerpted as under:-

"11. From the above it is clear that with poorly functioning kidney an individual is not acceptable to be enrolled and as per the Air Force procedure it is a case for rejection from service. In the instant case the applicant's poorly functioning kidney was noticed within less than three months of enrolment and this small size would have been existed before enrolment of the applicant. The applicant was still in the initial stage of training and the respondents followed the correct procedure for medical assessment and invalidment of the applicant. It is not for the Tribunal to question the specialist's opinion or question the changes made thereon which have been duly countersigned.

12. Even the civil medical report had confirmed that size of the right kidney is much smaller and less than half the size of the left kidney. However, what impact it would have on Air Force personal which can be best judged by the specialist within the Air Force. As such we take no cognizance of the opinion of civil Nephrologists.

13. We are of the opinion that due process for medical examination and invalidment has been followed. Applicant has not been able to make out a case. O.A. lacks merit and is liable to be rejected.

14. O.A. is accordingly rejected."

3. It is submitted by Ld. Counsel for the applicant that the applicant was enrolled in the IAF in fit state of health and the IMB has erred while opining that the disability is congenital in nature and by ignoring the manifest causing factors for aggravation due to stress and strain of training. Ld. Counsel for the applicant has relied upon O.A. No. 73 of 2014 **Ex-Rect Tararao Vankala vs Union of India & Ors** decided by AFT, Regional Bench, Chennai on 05.11.2014 and submitted that a similar case was decided by the Hon'ble Bench in favour of the applicant and the applicant was granted disability pension.

4. Per contra Ld. Counsel for the respondents submitted that the applicant was enrolled on 02.01.2013 and immediately thereafter on 19.03.2013 he was detected suffering from Jaundice. He was referred to Military Hospital, Belgaum where it was revealed that the applicant's right kidney was small in size. The applicant was referred to Command Hospital (Southern Command) Pune for opinion and further treatment of Nephrologists where the applicant underwent various investigations/tests including DTPA, Renal Scan and Ultrasonography. The Nephrologists categorized the applicant to P5 medical category and recommended for invalidment. It is further submitted that from 19.03.2013 till the date of his invalidment the applicant remained under treatment. It is further submitted that the Nephrologists who had medically examined, opined that the right underdeveloped kidney of the applicant was poorly functioning and the disease was congenital in nature. The IMB assessed the disability as neither attributable to nor aggravated by the Air Force Service. He argued that the applicant is not entitled to disability pension and pleaded that the O.A. be rejected.

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

6. Ld. Counsel for the applicant could not dispute that the right kidney of the applicant was underdeveloped. Medical investigations were conducted and since then till the date of his invalidment the applicant remained under treatment. The IMB found the right kidney of the applicant to be grossly underdeveloped and poorly functioning. Thus it is apparent that the disability was congenital i.e. by birth in nature. The applicant shortly after

recruitment was detected to be suffering from this deformity of the right kidney. In the case of ***Union of India & Ors vs. Baljit Singh***, (1996) 11 SCC 315, Hon'ble the Supreme Court has observed that in a case wherein disability pension is sought for and made a claim, it must be affirmatively established as to whether the injury (disability in the present case) was due to service or was aggravated which resulted into invalidation. In the instant case, the right kidney of the applicant was small to the extent of being half the size of left kidney and was poorly functioning. The abnormality was since birth (congenital) and by no stretch of imagination it can be presumed to be attributable to or aggravated by Air Force Service as size of kidney can never be reduced due to military training. We also find that the case law of ***Ex-Rect Tararao Vankala vs Union of India & Ors*** (supra) quoted by Ld. Counsel for the applicant does not help the applicant because the facts in both cases are entirely different.

7. In this case we agree with the view expressed by Medical Board. Going by the opinion of the Nephrologists we are convinced that the origin of disability is due to small size of right kidney and therefore this disability is congenital in nature and neither attributable to nor aggravated by the Air Force Service. Since the disease was detected within a short span of about two and half months after start of basic training therefore we agree with the opinion of the Medical Board that the disability is constitutional in nature and is neither attributable to nor aggravated by Air Force Service.

8. In view of the above, O.A. lacks merit and deserves to be dismissed.

9. It is accordingly **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : November, 2018
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