

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 965 of 2023**

Wednesday, this the 27<sup>th</sup> day of November, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)**  
**Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 505571-A Ex. Artificer Apprentice Sonveer Singh, Son of Sri Jeerendra Singh, Resident of Village Nagla Layak, P.O. Dhanuan, Tehsil Jaswant Nagar, District – Etawah, Uttar Pradesh-206245.

**..... Applicant**

Ld. Counsel for the : **Shri Dharam Raj Singh**, Advocate  
 Applicant **Shri Shyam Sunder Bajpai**, Advocate

Versus

1. Union of India through its Secretary, Ministry of Defence (Navy), New Delhi-110011.
2. Chief of Naval Staff, Defence, (for PDOP/PDPS), IHQ of Ministry of Defence (Navy), ‘C’ Wing, Sena Bhawan, New Delhi-110011.
3. The Commodore [(for SSO (Promotion)]m Bureau of Sailors, Sion-Trombay Road, Mankhurd, Mumbai-400088.
4. The Flat Officer Commanding-in-Chief (For Command Medical Officer), HQ Southern Naval Command, Kochi, Kerala-682004.
5. The Commanding Officer, INS Chilka, Post Chilka, District Khurda, Odissa-752037.

**..... Respondents**

Ld. Counsel for the : **Shri Arun Kumar Sahu**, Advocate  
 Respondents. Central Govt. Standing Counsel

**ORDER**

**“Per Hon’ble Mr. Justice Anil Kumar, 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) To issue/pass an order or direction to quash/ set aside/read down the impugned IMB findings, enclosed as Annexure No. A-1 to this original application, proceedings to the extent whereby the disability assessment and attributability of the applicant has been wrongfully determined; and*
- (ii) To issue/pass an order or direction quashing or setting aside the impugned order dated 22.09.2020 issued by the respondents, as contained in Annexure No. A-2 herewith, whereby the applicant’s prayer for grant of disability pension has been rejected; and*
- (iii) To assess the disability percentage of the applicant as 40% and round off the same to 50% as per rules; and*
- (iv) To issue/pass an order or direction hereby directing the opposite parties to pay to the applicant an appropriate sum towards exemplary damages suffered due to perforation of his left tympanic membrane on account of being assaulted and beaten up by his instructor; or*

- (v) *To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant; and*
- (vi) *To allow this original application with costs.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Navy on 08.02.2017 and was invalided out from service with effect from 01.12.2017 in Low Medical Category after rendering 09 months and 23 days of qualifying service. Before invalidation from service, the Invaliding Medical Board (IMB) held at INHS NIVARINI/CHILKA on 28.07.2017 assessed his disability **'CHRONIC HBV INFECTION (? IMMUNO TOLERANT PHASE), ICD NO. K 73.0'** @20% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 11.03.2019. The applicant preferred First Appeal dated 14.06.2018 which too was rejected vide letter dated 22.09.2020. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Indian Navy 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 and attributable to or aggravated by Naval Service. He further submitted that the impugned orders passed by the respondents are perverse to the provisions of the Regulation 423(a) & (c) read with Regulation 153 of the Regulations for the Medical Services of the Armed Forces, 1983. Further, as per the Guide to Medical Officers (Military Pensions), the attributability of viral Hepatitis infections is to be conceded in all incidences of the disease being acquired in service except insofar when caused due to AIDS contracted sexually and due to drug abuse and as such in these two exceptions alone the attributability becomes rejectable. as per the Guide to Medical Officers (Military Pensions) the proper assessment for Chronic HBV infection is 30% to 40%. Ld. Counsel for the applicant relied upon the law laid down by the Hon'ble Apex Court in the case of ***Sukhwinder Singh vs Union of India & Ors*** (Civil Appeal No. 5606 of 2010) reported in (2014) STPL (WEB)

468 SC, ***Dharamvir Singh Versus Union of India & Others***, reported in (2013) 7 Supreme Court Cases 316 and ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10<sup>th</sup> December 2014). The Ld. Counsel for the applicant, on account of aforesaid, pleaded for disability pension to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that since the IMB has opined the disability as NANA, the applicant is not entitled to disability pension in terms of Regulation 100 of The Navy (Pension) Regulations, 1964. He further contended that after enrolment the applicant was posted to INS Chilka for his basic training. during the basic training period he was admitted for medical treatment to Command Hospital (Central Command), Lucknow where he had been diagnosed to be suffering from the aforesaid disability. Then consequently, he was transferred to INHS Kalyani and INHS Nivarini, Chilka for further treatment. The IMB has stated that "*As per appendix to Chapter VI, page No. 59 of GMO 2008, incubation period for HBV is usually 12 Weeks and range is 45 to 180 days. However, the recruit joined service on 08 Feb 17 and was detected HBV +ve in the same month of joining, this indicates that the*

*individual would have contracted the infection prior to joining navy. Hence the disability is neither attributable nor aggravated by military service.”* He pleaded that in the facts and circumstances, as stated above, Original Application deserves to be dismissed.

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

6. On careful perusal of the documents, it has been observed that the applicant was enrolled on 08.02.2017, and the disease applicant was found to be suffering with in medical test first started in February, 2017 itself, i.e. within one month of joining the service. Further, we find that the IMB has given detailed Reason/Cause/Specific condition and period in service that “*As per appendix to Chapter VI, page No. 59 of GMO 2008, incubation period for HBV is usually 12 Weeks and range is 45 to 180 days. However, the recruit joined service on 08 Feb 17 and was detected HBV +ve in the same month of joining, this indicates that the individual would have contracted the infection prior to joining navy. Hence the disability is neither attributable nor aggravated by military service.”*

7. In the above scenario, we are of the opinion that since the disease has started in less than one month of his enrolment or prior to his enrolment, hence by no stretch of imagination, it can be concluded that it has been caused by stress and strains of military service. Additionally, it is well known that some diseases can escape detection at the time of enrolment, hence benefit of doubt cannot be given to the applicant merely on the ground that the disease could not be detected at the time of enrolment. Since there is no causal connection between the disease and military service, we are in agreement with the opinion of the IMB that the disease is NANA. In view of the foregoing and the fact that the disease manifested in less than one month of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.

8. Apart from above, in similar factual background this Tribunal had dismissed the claim for disability pension in T.A. No. 1462/2010 vide order dated 23.05.2011, wherein the 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.

The said order has been upheld by the Hon'ble Apex Court in Civil Appeal arising out of Dy. No. 30684/2017, ***Bhartendu Kumar Dwivedi Versus Union of India and Others***, decided on November 20, 2017, by dismissing Civil Appeal on delay as well as on merits.

9. Additionally, in Civil Appeal No 7672 of 2019 in ***Ex Cfn Narsingh Yadav vs Union of India &Ors***, decided on 03.10.2019, it has again been held by the Hon'ble Supreme Court that the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there are very valid reasons and strong medical evidence to dispute the opinion of Medical Board. Relevant part of the aforesaid judgment as given in para 21 are as below :-

*"21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of the Review Medical Board. The Invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness*



*of the Report of the Invaliding Medical Board.”*

10. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to costs.

12. Pending applications, if any, are disposed of accordingly.

(Vice Admiral Atul Kumar Jain)  
Member (A)

(Justice Anil Kumar)  
Member (J)

Dated : 27 November, 2024

AKD/-