

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

ORIGINAL APPLICATION No. 388 of 2020

Monday, this the 25th day of October, 2021

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

Pankaj Kumar (personal No. 2717032X Rank-Rect) S/o
Jagveer Singh R/o 10, Ahraula, Ahraula, Aligarh, U.P.-202135.

..... Applicant

Ld. Counsel for the : **None for the applicant.**
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Commanding Officer, GRC, Jabalpur.
3. Base Hospital, Lucknow through its Incharge in Chief.
4. Lt. Cap. AMC CL GPI (Ortho).

.....Respondents

Ld. Counsel for the
Respondents.

Shri Arun Kumar Sahu,
Central Govt. Counsel

ORDER (Oral)

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

- (i) To quash the discharge order dated 14.07.2019 passed by the opp. party No 4.*
- (ii) To reinstate the applicant in service with all consequential benefits and-*
- (iii) To grant any relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

2. Brief facts of the case are that applicant was enrolled in the Army on 26.03.2018 as an Infantry soldier. During the course of basic military training, applicant sustained injury to his left knee on 14.12.2018 during route march exercise (on duty). He was admitted in Military Hospital, Jabalpur on 20.12.2018 and further transferred to Base Hospital, Lucknow on 24.12.2018 for treatment. After providing due treatment, he was granted four weeks sick leave for the period 29.12.2018 to 25.01.2019. However, he was found symptomatic even after granting sick leave and hence he underwent surgery on 13.02.2019. After surgery, the applicant was again granted four weeks sick leave for the period 01.03.2019 to 28.03.2019. On rejoining he was placed in low medical category A3 (T-06) w.e.f. 08.04.2019 for the diagnosis 'Partial Tear ACL (Lt) Knee (Optd).'

3. On subsequent review, the medical authority recommended that individual is symptomatic with pain and restricted range of left knee motion. Being a recruit and absent in training for 165 days, he was recommended to be invalided out of service. Accordingly, his Invaliding Medical Board (IMB) was carried out at Military Hospital, Jabalpur on 31.07.2019 and he was boarded out of service w.e.f. 14.09.2019 (AN) with disability percentage @ 20% for two years attributable to military service in terms of Rule 13 (3) (iv) of Army Rules, 1954. This O.A. has been filed for quashing of discharge order dated 14.09.2019 and applicant's re-instatement into service.

4. Learned counsel for the applicant pleaded that the impugned order for his invalidment from service has been passed in an arbitrary and illegal manner on the ground that he is unfit to serve in the Army whereas applicant is fully fit to serve in the Army. He pleaded for quashing of invalidation order and re-instatement of applicant into service.

5. On the other hand, submission of learned counsel for the respondents is that applicant suffered injury while on duty. His further submission is that after undergoing knee surgery and granting him sick leave, applicant was not found fit to serve further in the Army, therefore, he was invalided out of service. His other contention is that since applicant was already absent from training for more than five months, he was rightly

invalidated out of service being unfit to sustain rigors of Army service. He pleaded for dismissal of O.A.

6. We have heard learned counsel for both the sides and perused the material placed on record.

7. Applicant was undergoing basic military training and during route march exercise he sustained left knee injury on 14.08.2018. He underwent knee surgery and was placed in low medical category. Thereafter, even after providing him sick leave, he was found inept to undergo further training. Therefore, on recommendation of Classified Specialist (Ortho) dated 28.05.2019 he was invalidated out of service being placed in medical category A5.

8. It is worthwhile to mention that prior to his invalidation the Classified Specialist (Ortho), Base Hospital, Lucknow has made following endorsements on case sheet of applicant as under:-

"Individual is symptomatic with pain and restricted range of motion left knee. He has already completed 165 days of absence from training and in view of persistent symptoms and low motivation levels to continue training, individual will not be able to undergo the rigorous further military training and be a fit soldier in the Armed Forces. Hence, the individual is recommended to be invalidated out of service in low medical category A5 (five)."

9. Thus, from the aforesaid an inference may be drawn that the Classified Specialist (Ortho) has recommended applicant to be boarded out when his knee could not be cured even after surgery and sick leave.

10. Since applicant's aforesaid disability has been assessed @ 20% for two years attributable to military service, he is entitled to disability pension @ 20% for two years rounded off to 50% for two years in terms of the Hon'ble Apex Court judgment in the case of ***Union of India and Ors vs. Ram Avtar***, Civil Appeal No. 418 of 2012 decided on 10.12.2014.

11. In view of the above, applicant is held entitled to disability pension @ 50% for two years. Respondents are directed to hold applicant's RSMB within a period of three months to decide his further disability percentage. Default will invite interest @ 6% p.a.

12. It is made clear that on account of applicant being placed in A5 medical category, he cannot be re-instated into service as Classified Specialist (Ortho) has clearly indicated in his opinion that he cannot sustain rigors of military training.

13. No order as to costs.

14. Pending miscellaneous applications, if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 25.10.2021
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