

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 455 of 2020**Friday, this the 1<sup>st</sup> day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 15512618A, Ex Rect Ravi  
S/o Gangan Sharan Singh  
R/o Village - Kanpur, Jahangirpur, Tehsil – Jewar,  
District – Gautam Buddha Nagar (UP)**.... Applicant**Ld. Counsel for the Applicant : **Ms. Ruby Singh**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. The Chief of the Army Staff, through Personal Secretary, South Block, IHQ of MOD (Army), DHQ PO New Delhi.
3. GOC-in-C, HQs Southern Command (DV) PIN – 908541, C/o 56 APO.
4. D.D.M.S., HQ MG and G Area, PIN 900497, C/o 56 APO.
5. Officer-in-charge Records, Records Armoured Corps Pin 900476, C/o 56 APO.
6. Commandant, Basic Training Regiment, Armoured Corps Centre & School, Pin 900476, C/o 56 APO.

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

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

- “(I) To issue an order or direction to the opp. Parties to immediately reinstate the applicant in service on the post of Computer Operator (Category SOL GD RAJPUT) with all consequential benefits and pay him salary regularly every month.
- (II) To issue an order or direction to quash/cancel the IMB dated 07 August 2014.
- (III) To issue an order or direction for arrange “One Time Review medical Board for life” of applicant under the rules/authorities mentioned below –
- (a) Para 482 of RMSAF-1983.
- (b) Para 10 of Govt. of India MoD letter no. 1(2)/97/D (Pers) dt 7.2.2001 and AHQ letter no. B/40122/AG/PS-4 (d) dated 2.3.2001 (fully applicable to applicant’s case).
- (c) Para-2 of DGAFMS letter no. 16036/MA (Pens) dt. 13.10.2006 and
- (d) Addl Dte Gen Pers Ser. AG’s Branch, Int HQ of MoD (Army) no. B/40122/MA (P)/AG/PS-5 dt. 20 Jul 2006 and references quoted therein.
- (IV) Some other suitable order which may be deemed fit and proper in the circumstances of the case, including an order of awarding the cost of this application in favour of the applicant against the respondents hereto be issued.”

2. Brief facts of the case are that the applicant was enrolled in the Indian army on 20.12.2013 and was invalided out of service on 20.09.2014 after rendering 9 months of service under Rule 13 (3) Item IV of Army Rules, 1954 being placed in low medical category A-5 for disability “**PARTIAL AMPUTATION DISTAL PHALANX (RIGHT) THUMB (OLD)**” by Invaliding Medical Board (IMB) dated 07.08.2014. The applicant was enrolled in the Army with “PARTIAL AMPUTATION

DISTAL PHALANX (RIGHT) THUMB (OLD)” as per medical documents which took place before his enrolment in the Army/childhood. While undergoing basic military training at Centre, the applicant was admitted in MH Ahmednagar on 26.02.2014 for the diagnosis “PARTIAL AMPUTATION DISTAL PHALANX (RIGHT) THUMB (OLD)”. On further investigation it was found that initial medical of the applicant was carried out on 29.08.2013 at Recruiting Office wherein he was found unfit for enrolment due to Amputation Right Thumb. The applicant was subsequently made fit by Surgical Specialist in MH Meerut on 19.09.2013, therefore, applicant got enrolled in the Army. The above disability was re-examined at Armoured Corps Centre and found to be not acceptable as it will interfere with training and his performance of which require opinion of Senior Advisor, Surgery. The applicant was examined by Senior Advisor, Surgery at MH Kirkee and he opined that applicant has permanent partial loss of function of right thumb due to amputation of distal-half of termination phalanx. The disability is permanent in nature and will interfere with military training and therefore, applicant is surgically unfit for recruit training and retention in service. According to Surgical Specialist opinion dated 06.03.2014, IMB was held at MH Ahmednagar on 07.08.2014 and applicant was found fit to be invalided out from service and disability was considered as neither attributable to nor aggravated by service (NANA). Accordingly, applicant was invalided out from service on 20.09.2014. Applicant’s disability pension claim was submitted but it was rejected being NANA under the provisions of Para 173 of Pension Regulations for

the Army, 1961 (Part-1) and para 81 (a) of Pension Regulations for the Army, 2008 (Part-1). The rejection of disability pension claim was communicated to the applicant by Records vide letter dated 10.03.2015. The applicant submitted a petition dated 10.03.2015 which was replied by Record vide letter dated 24.04.2015. Thereafter, applicant submitted applications dated 11.05.2015, 15.07.2015, 16.03.2016 which were replied by Records vide letters dated 09.06.2015, 19.03.2016. Thereafter, applicant submitted his first appeal dated 04.04.2016 which was rejected vide letter dated 23.10.2017. Being aggrieved, applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that a person 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 applicant was found fit by Classified Specialist, Surgeon on MH Meerut on 13.09.2013, therefore, holding of IMB on 07.08.2014 and invaliding out from service is illegal and arbitrary. The statement of respondents that applicant is unfit to undergo recruit military training is totally incorrect because applicant had completed his basic training successfully on 26.05.2014. She further submitted that para 10 of GOI, MOD letter dated 07.02.2001, AHQ letter dated 02.03.2001,

DGAFMS letter dated 13.10.2006 are applicant in applicant's case and therefore, he should be reinstated in service with all consequential benefits.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant was examined by Senior Advisor, Surgery at MH Kirkee and it was opined that disability is permanent in nature and will interfere with military training and therefore, applicant is surgically unfit for recruit training and retention in service. According to Surgical Specialist opinion dated 06.03.2014, IMB was held at MH Ahmednagar on 07.08.2014 and applicant was found fit to be invalided out from service and disability was considered as neither attributable to nor aggravated by service (NANA). Accordingly, applicant was invalided out from service on 20.09.2014. Applicant's disability pension claim was submitted but it was rejected being NANA under the provisions of Para 173 of Pension Regulations for the Army, 1961 (Part-1) and para 81 (a) of Pension Regulations for the Army, 2008 (Part-1). He further submitted that IMB has opined that applicant had contracted the disability prior to joining the service. Hence, there is no provision for reinstatement in the Army once discharged from service for a disability which the applicant suffered prior to his enrolment in the Army. He pleaded for dismissal of O.A.

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

6. On perusal of the records and medical documents, it has emerged that as per opinion of Senior Advisor, Surgery at MH Kirkee,

applicant has permanent partial loss of function of right thumb due to amputation of distal-half of termination phalanx. The disability is permanent in nature and will interfere with military training and therefore, applicant is surgically unfit for recruit training and retention in service.

7. First Appellate Committee in its rejection letter dated 23.10.2017 stated that *“the individual was found with childhood disability i.e. prior to enrolment in the Army and the individual was found unfit to undergo recruit military training as mentioned in IMB. The circumstances of the incident have no causal connection with military service”*.

8. The applicant was invalided out of service being low medical category A-5 as recommended by IMB. Further, the competent authority while adjudicating the disability pension claim of the applicant has also examined applicant's disability in the light of relevant rules and finally rejected being neither attributable to nor aggravated by military service and having no causal connection with regard to disability which the applicant suffered prior to his enrolment in the Army. We are in agreement with the opinion of IMB proceedings. Additionally, a recruit is akin to a probationer and hence prima facie the respondents as an employer have a right to discharge a recruit who is not meeting the medical requirement of military service.

