

RESERVED
(Court No 2)

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

Original Application No. 95 of 2022

Wednesday, this the 04th day of October, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

No. 2695579X Ex Rect Ravindra Yadav, son of Shri Radhey Shyam Yadav, Resident of Village-Kanjehra, Post Office-Asna, District-Chandauli-232110 (UP).

.... Applicant

Ld. Counsel for the: **Shri R Chandra**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, PO-New Delhi-11.
3. The Officer-in-Charge, The Grenadiers Records, PIN-908776, C/o 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad-211014 (UP).

... Respondents

Ld. Counsel for the: **Ms Preeti Mala**, Advocate
Respondents Central Govt Counsel.

ORDER

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:-

- (I) *The Hon'ble Tribunal may be pleased to strike down Para 4 of the letter dated 16.07.2020 issued by respondent No 1 (Annexure-A/1).*
- (II) *The Hon'ble Tribunal may be pleased to direct the respondents to grant the invalid pension to the applicant in view of letter dated 16.07.2020 alongwith arrears from the date of 04.01.2019 alongwith interest at the rate of 24% per annum.*
- (III) *Any other appropriate writ, order or direction which the Hon'ble Court may deem just and proper in the nature and circumstances of the case.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 17.01.2000. During the course of his basic military training, on second medical examination, he was found to be suffering from '**Colour Perception CP-IV and Exotropia-15^o**'. Accordingly, he was admitted to Military Hospital, Jabalpur on 11.05.2000 for treatment. He was transferred to Command Hospital (Central Command), Lucknow on 26.05.2000 for getting opinion of Senior Advisor (Ophthalmology). The competent medical authority at Command Hospital, Lucknow recommended him to be invalided out from service in low medical category 'EEE' for both the disabilities. Subsequently, he was brought before

Invaliding Medical Board (IMB) held at Military Hospital, Jabalpur on 20.07.2020 which assessed his disabilities @ 15-19% for two years neither attributable to nor aggravated by military service. He was invalided out from service w.e.f. 25.08.2000 under Rule 13 (3) IV of Army Rules, 1954 having been found medically unfit for further military service. At the time of invalidation, he had put in 07 months and 09 days service. His claim for grant of disability pension was denied by PCDA (P), Allahabad vide letter dated 15.10.2001. Thereafter, applicant submitted appeal to Chief of the Army Staff (COAS) requesting to either provide alternative employment or grant disability pension which being denied, he filed Writ Petition No. 3710 of 2002 in the Hon'ble High Court of Judicature at Jabalpur (Madhya Pradesh) for quashing discharge order and re-instatement into service. This Writ Petition was disposed off vide order dated 31.07.2002 with direction to conduct fresh medical examination of the applicant by Army Doctors other than those who had earlier conducted his medical examination. Accordingly, his fresh medical examination was conducted at Military Hospital, Jabalpur on 27.12.2002 in which he was again found to be unfit for

further service. This facts was communicated to applicant vide letter dated 24.07.2003.

3. On 28 Feb 2016 applicant preferred first appeal against rejection of disability pension claim which was rejected vide order dated 01.06.2017 advising the applicant to prefer second appeal within six months but applicant did not submit second appeal. Subsequently, applicant filed O.A. No. 212 of 2020 before this Tribunal for grant of disability pension w.e.f. 26.08.2000 which was dismissed on merit vide order dated 19.07.2021. Now this O.A. has been filed to strike down para 4 of letter dated 16.07.2020 issued by respondent No. 1 and to grant invalid pension to the applicant w.e.f. 04.01.2019 alongwith interest at the rate of 24% per annum.

4. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 17.01.2000. It was further submitted that due to work pressure his mental health was affected and he was placed in low medical category for 'Colour Perception CP-IV and Exotropia' on second medical examination. It was further submitted that due to being placed in low medical category applicant was invalidated out from service on the recommendation of IMB w.e.f. 25.08.2000 with

disablement @ 15-19% for two years. It was further submitted that O.A. No 212 of 2020 filed by the applicant was dismissed vide order dated 19.07.2021.

5. Learned counsel for the applicant further submitted that applicant was denied disability pension and he has not been granted invalid pension also as he had not put in 10 years service at the time of invalidment. It was further submitted that impugned order dated 16.07.2020 issued by respondent No 1 makes such personnel entitled for invalid pension who are invalided out of service with less than 10 years of qualifying service on account of any bodily or mental infirmity, which is neither attributable to nor aggravated by military service and which permanently incapacitates them from military service as well as civil re-employment. It was further submitted that the benefit has, however, been restricted to only such persons who were/are in service on or after 04.01.2019. Further submission of learned counsel for the applicant is that it is apparent that a homogeneous class of the armed forces personnel invalided out of service for diseases neither attributable to nor aggravated by military service before completion of 10 years service has been divided into two classes i.e. the persons invalided out before 04.01.2019 and after 04.01.2019.

6. Further submission of learned counsel for the applicant is that the Hon'ble Apex Court in the case of ***DS Nakara and Ors vs Union of India*** , (1983) 1 SCC 305 was pleased to hold that the pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer nor an ex-gratia payment. It was further held that the basic principle which informs both Article 14 & 16 is equality and inhibition against discrimination. It was further submitted that since impugned order dated 16.07.2020 denies invalid pension to pre 04.01.2019 retirees, therefore order dated 16.07.2020 being arbitrary is liable to be quashed.

7. Learned counsel for the applicant further submitted that applicant is entitled to invalid pension in terms of Para 197 of the pension Regulations for the Army, 2008 (Part-I) as per which invalid pension/gratuity shall be admissible to an individual who is invalided out of service on account of a disability, which is neither attributable to nor aggravated by military service but the disability is assessed at less than 20% and to a low medical category individual who is retired/discharged from service for lack of alternative employment compatible with his low medical category. He pleaded for grant of invalid pension to the applicant.

8. Per contra, learned counsel for the respondents submitted that applicant being enrolled in the Army on 17.01.2000 was subjected to second medical examination during the course of military training in which he was found to be suffering from 'Colour Perception CP-IV and Exotropia'. He was admitted to Military Hospital, Jabalpur on 11.05.2000 for further treatment. The applicant was transferred to Command Hospital (Central Command), Lucknow on 26.05.2000 for obtaining opinion of Senior Adviser (Ophthalmology). It was further submitted that based on opinion of Senior Adviser (Ophthalmology), Command Hospital, Lucknow, who recommended him to be invalided out from service in medical category 'EEE', applicant was brought before IMB on 20.07.2000 which assessed his medical disability @ 15-19% for two years neither attributable to nor aggravated by military service. Accordingly, he was invalided out from service w.e.f. 25.08.2000.

9. Learned counsel for the respondents further submitted that after invalidation from service, applicant's legitimate dues were paid and his disability pension claim was rejected vide order dated 15.10.2001. Further submission of learned counsel for the respondents is that based on order dated 31.07.2002 passed in Writ Petition

No. 3710 of 2002 by the Hon'ble High Court of Jabalpur, applicant's re-medical examination was conducted at Military Hospital, Jabalpur on 27.12.2002 which also found him to be unfit for further military service.

10. Learned counsel for the respondents further submitted that applicant had filed belated first appeal dated 28.02.2016 which was rejected vide order dated 01.06.2017 advising him to prefer second appeal but applicant failed to do so. It was further submitted that applicant submitted representation dated nil to find out fate of his appeal which was replied by letter dated 28.12.2017 communicating him that his appeal was rejected.

11. Learned counsel for the respondents further submitted that applicant is not entitled to grant of invalid pension in terms of Para 173 of Pension Regulations for the Army, 1961 (Part-I) which says 'unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. It was submitted that since the IMB, who is an expert body and who had physically examined the

applicant, has assessed his disability @ less than 20% and considered the disability as neither attributable to nor aggravated by military service and clearly mentioned that the disabilities existed before entering into service, hence he is not entitled to disability/invalid pension.

12. Rebutting applicant's arguments, learned counsel for the respondents further submitted that since applicant was invalided out from service w.e.f. 25.08.2000, his case is not covered by the provisions of policy letter dated 16.07.2020. He pleaded for dismissal of O.A. citing order dated 20.09.2018 passed by AFT, Chandigarh in O.A. No. 1392 of 2014, ***Ex Recruit Suresh Kumar vs Union of India & Ors.***

13. Heard Shri R Chandra, learned counsel for the applicant and Ms Preeti Mala, learned counsel for the respondents and perused the record.

14. Facts with regard to applicant's enrolment in the Army and invalidation from service are not disputed. As per rules on the subject applicant's second medical board, while undergoing basic military training, was conducted in which he was found to be suffering from 'Colour Perception CP-IV and Exotropia'. He was admitted to Military Hospital, Jabalpur on 11.05.2000 from where he

was referred to Command Hospital (Central Command), Lucknow for opinion of Senior Adviser (Ophthalmology). The competent medical authority at Command Hospital (Central Command), Lucknow recommended him to be invalided out from service in low medical category 'EEE' for both the disabilities. Subsequently, he was brought before the IMB at Military Hospital, Jabalpur on 20.07.2000. The IMB assessed his disabilities @ 15-19% for two years and considered the same as neither attributable to nor aggravated by military service. Accordingly, he was invalided out from service w.e.f. 25.08.2000 under Rule 13 (3) IV having been found medically unfit for further military service.

15. The Medical Adviser placed at Command Hospital (Central Command), Lucknow has made following remarks on applicant's condition when he was referred from Military Hospital, Jabalpur:-

"Summary and opinion of Col RP Mishra, Senior Adviser (Ophthal), in Command Hospital (CC), Lucknow-2 on 29.05.2000.

This recruit was found to have colour perception CP IV and Exotropia during 2nd Medical Exam. As such referred for this opinion of Senior Adviser, Ophthal.

On Exam

(1) Colour perception CP IV (MLT)

(2) Exotropia 15^o

Unfit

Recommended to be invalided out of service in medical category 'EEE'.

In view of the above, the individual brought before Medical Board.

Sd/- x x x x x

(RP Mishra)

Col/AMC

Senior Adviser (Opthal)

Command Hosp (CC) Lucknow-2"

16. After invalidation from service his disability pension claim was submitted on 21.12.2000 but the same was rejected by PCDA (P), Allahabad vide order dated 15.10.2001 and this was communicated to applicant vide letter dated 06.11.2001. He was paid his legitimate dues at the time invalidation from service.

17. Against his alleged illegal invalidation he filed Writ Petition No. 3710 of 2002 before the Hon'ble High Court of Judicature at Jabalpur (Madhya Pradesh) which was disposed off vide order dated 31.07.2002 with direction to conduct his re-medical examination by Army Doctors other than those who had earlier done his medical examination. Accordingly, his re-medical examination was conducted at Military Hospital, Jabalpur on 27.12.2002 by different military doctors. However, he was again found medically unfit for further service. For convenience sake, endorsement made by Graded Specialist, Ophthalmology is reproduced as under:-

"This Ex Recruit has been sent for re-medical examination as per the court order. He was invalidated out of service due to colour blindness-colour perception CP IV and Exotropia.

On Examination

*15^o Exotropia (R) Eye present. Colour vision testing shows colour perception CP IV-Colour Defective unsafe. He is **UNFIT** for service due to manifest Squint-Exotropia and Colour Blindness-Colour Perception CP IV"*

18. The aforesaid re-medical examination shows that on re-examination by different medical doctors he was found to be suffering from same disability as observed by Senior Adviser (Ophthalmology) of Command Hospital (Central Command), Lucknow on 29.05.2000. In re-medical examination he has also been declared unfit for further military service.

19. Applicant had filed O.A. No. 212 of 2020 before this Tribunal for grant of disability pension which was dismissed vide order dated 19.07.2021 on the ground that the said disabilities are neither attributable to nor aggravated by military service as these were existing prior to enrolment and probably these could not be detected at the time of enrolment.

20. Applicant's first appeal was rejected by Appellate Authority vide order dated 01.06.2017 on the ground that the invaliding disabilities being genetic disorder are neither attributable to nor aggravated by military service.

For convenience sake, extract of order dated 01.06.2017 is reproduced as under:-

"2. The Appellate Committee on First Appeals (ACFA) has carefully considered the appeal dated 28 Feb 2016 submitted by above named individual in the light of relevant rules and administrative/medical provisions and the appeal has not been approved to the extent indicated below-

Ser No	Disability (s)	Reason (s)
(i) (ii)	Colour Perception & Exotropia	The IDs were detected during second medical examination conducted on the individual after joining, and was found to have Colour Perception CP IV (MLT) and Exotropia 15°. Exotropia is seen generally in association with genetic disorders or previous eye muscle surgery for strabismus and is probably familial in nature. The IDs were conceded as neither attributable to nor aggravated by military service in terms of Para 20, Chap VI of GMO 2002, amendment 1980 and Para 34, Chap VI, GMO 2002, amendment 2008 and ER 2008.

21. The Appellate Committee on First Appeals (ACFA) has also examined applicant's disability in the light of relevant rules and finally rejected the case being neither attributable to nor aggravated by military service. We are in agreement with the opinion of Appellate Committee and IMB proceedings and we are of the view that both the disabilities seem to be congenital disorder.

22. Applicant was enrolled in the Army on 17.01.2000 and during second medical examination i.e. within four months he was found to be suffering from the aforesaid disabilities. In the above scenario, we are of the opinion that since the disabilities were detected within four months from 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 disabilities can escape detection at the time of enrolment as military aspirants are recruited in recruitment rallies where expert medical doctors are not present, hence benefit of doubt cannot be given to the applicant merely on the ground that the disability could not be detected at the time of enrolment. Since there is no nexus between the disease and military service, we are in agreement with the opinion of the IMB that the disabilities were existing prior to enrolment. Additionally, a recruit is akin to a probationer and hence, prima facie the respondents as an employer have every right to discharge a recruit who is not meeting the medical requirement of military service and is not likely to become a good soldier. In view of the foregoing and the fact that the disabilities were detected within four months from the date of his enrolment, we are in agreement with the opinion of IMB that the diseases of the applicant were existing prior to enrolment.

23. Additionally, in Civil Appeal No 7952 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 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. Relevant part of the aforesaid judgment as given in para 21 is as below :-

"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."

24. Since the Medical Board is a duly constituted body of medical experts, the courts restrained to order re-medical examination, but in the present case, applicant's re-medical examination was conducted on 27.12.2002 at Military Hospital, Jabalpur based on order dated 31.07.2002 passed by the Hon'ble High Court of Jabalpur. In re-medical examination he was found to be suffering from the same disability as was detected by the Invaliding Medical Board.

25. Further, having perused IMB proceedings we find that opinion of the Medical Board has been endorsed on page 3 (para 1) as per which his disabilities were existing prior to

enrolment. For convenience sake extract of page 3 (Para 1) of IMB proceedings is reproduced as under:-

"1. *Did the disability exist before entering service?*
-Yes

We, therefore, find force in submission of the respondents in para 9 of the counter affidavit that the disabilities were existing prior to enrolment.

26. The Medical Board conducted on applicant has explicitly endorsed that the disabilities were existing prior to enrolment. Since the disabilities suffered by the applicant were existing prior to enrolment, there seems to be no relation of disabilities to military service. It is trite law that disability pension/invalid pension can only be granted to an individual whose disability has some nexus with military service.

27. It is further noticed that President Medical Board in certificate dated 20.07.2020 has endorsed his opinion stating that applicant's disabilities has no relation with military service. For convenience sake, remarks endorsed by President Medical Board are extracted as under:-

"A case of colour perception CP-IV (379) Exotropia 15⁰ detected during second medical examination. There is no history or contributory factor, causing above mentioned disabilities. Hence, not related to military service condition."

28. In this case the IMB, who is an expert body and who had physically examined the applicant, had considered the disabilities as neither attributable to nor aggravated by military service and clearly mentioned that the disabilities were existed before entering into service, hence their opinion is to be given due weightage, value and credence. Therefore, we go by the IMB which has considered his disabilities being existing prior to enrolment and neither attributable to nor aggravated by military service.

29. Prior to issue of order dated 16.07.2020, Army personnel who were invalidated out from service after 10 years service were entitled for invalid pension even in NANA case but after issue of the aforesaid letter personnel below 10 years service are also entitled for invalid pension subject to condition that invaliding disability incapacitates the individual for military and civil employment.

30. In the IMB proceedings it has been mentioned that applicant is unfit for military service. The applicant could have been granted invalid pension had there been mention in IMB proceedings that he is unfit for civil employment also, but on perusal of IMB proceedings we

find that nothing is endorsed in the medical board which incapacitates the applicant for civil employment.

31. In view of the endorsement made in IMB proceedings dated 20.07.2000 that the disabilities were existing prior to enrolment and the fact that nothing has been recorded in medical board proceedings which incapacitates the applicant for getting civil employment, invalid pension is not entitled to the applicant.

32. Applicant has challenged para 4 of policy letter dated 16.07.2020 which entitles an individual for grant of invalid pension to those who were invalided out from service with less than ten years qualifying service on account of any bodily or mental infirmity which is NANA and which permanently incapacitates them from military service as well as civil employment. This letter further provides that the benefits shall be applicable to those personnel who are/were in service on or after 04.01.2019. It is also mentioned in that letter that cases in respect of personnel who were invalided out from service before 04.01.2019 will not be re-opened. In the case in hand, the applicant was enrolled on 17.01.2000 and invalided out from service on 25.08.2000, therefore benefit of this letter is not applicable to the applicant.

33. The Govt of India, Min of Def is empowered to make rules and regulations for smooth functioning of military organization. Rules/Regulations/Policy Letters related to Defence Ministry are made by Govt of India keeping in view the interest of the Armed Forces Personnel and while introducing a new rule/policy, a cut off date is always drawn for effective implementation of the order as was done in the case for grant of dual family pension which was made effective w.e.f. 24.09.2012. Accordingly, in the case in hand the provisions of this letter have been made applicable to those Armed Forces personnel who were/are in service on or after 04.01.2019, therefore we are of the view that para 4 of aforesaid letter is not arbitrary.

34. In view of the observations made in the body of order, the O.A. is **dismissed**.

35. No order as to costs.

36. Misc application (s), pending if any, stand disposed off.

(Maj Gen Sanjay Singh) **(Justice Anil Kumar)**
Member (A) **Member (J)**

Dated: 04.10.2023

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RESERVED
Court No 2

Form No. 4

{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**O.A. No. 95 of 2022****Ex Rect Ravindra Yadav**
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Ors
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>29.09.2023</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p>Judgment pronounced. O.A. No. 95 of 2022 is dismissed. For orders, see our judgment and order passed on separate sheets.</p> <p>(Maj Gen Sanjay Singh) Member (A) <i>rathore</i></p> <p>(Justice Anil Kumr) Member (J)</p>