

**RESERVED**  
**COURT NO 1**

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

**ORIGINAL APPLICATION No. 159 OF 2019**

Monday, this the 30<sup>th</sup> day of September, 2019

**“Hon’ble Mr. Justice Virender Singh, Chairperson  
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No 15797946M Ex Rect Suresh Chandra Bhatt, son of Shri ND Bhatt resident of C/O Bhairav Datt Joshi, Lane No-11, New Defence Colony, Utratia, Raibareilly Road, Near Shaheed Path, Lucknow-226025.

.....Applicant

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

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of Ministry of Defence (Army), DHQ, PO-New Delhi-110011.
3. OIC Records, Army Air Defence Records, PIN-908803.
4. Officer Iincharge, PAO (OR), Arty/AAD.

.....Respondents

Ld. Counsel for the Respondents: **Mohd Zafar Khan,** Advocate  
Central Govt Counsel.

**ORDER**

**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. Being aggrieved by denial of disability pension, the applicant has filed the present Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 wherein he has sought the following reliefs:-

- (a) *To quash the finding of the medical board and Appellate authority and grant disability pension with rounding off benefit since date of discharge-02.02.2012.*
- (b) *To pass such other order (s) which their Lordships may deem fit and proper in the existing facts and circumstances of the case.*
- (c) *Allow this application with cost of rupees 50,000/-.*

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 06 years, 03 months and 15 days. Since payment of disability pension involves recurring cause of action, the delay was condoned vide order dated 28.02.2019.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 29.03.2011 and was invalided out of service w.e.f. 02.02.2012 while undergoing military training at Army Air Defence Centre, Gopalpur (Orissa). While undergoing training as a recruit he was admitted in Military Hospital, Gopalpur on 04.10.2011 with certain kidney related problems. He was further transferred to Command Hospital (Eastern Command) Kolkata where he was examined and treated by Consultant Medicine and Nephrology. He was diagnosed a case of ‘Solitary Left Kidney (Right Renal

Agencesis' The applicant was brought before Invaliding Medical Board (IMB) which recommended him to be invalided out of service in medical category S1H1A1P5E1. The applicant was accordingly invalided out of service under Rule 13 (3) of the Army Rules, 1954. The duly constituted IMB assessed his disability @ 40% and opined it to be neither attributable to nor aggravated by military service (NANA) with an endorsement that the 'disability existed before entering into service' being congenital i.e. by birth. Disability pension claim and first appeal were rejected on the grounds of NANA.

4. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army in a medically and physically fit condition and there was no note in his service documents with regard to suffering from any disability prior to enrolment, therefore any disability detected/suffered after joining the service, should be attributable to military service and the applicant is entitled to grant of disability pension.

5. On the other hand, Ld. Counsel for the respondents contended that since the applicant's disability is neither attributable to nor aggravated by military, hence his claim has rightly been rejected by the competent authority. It was also submitted that the applicant's disability was detected during basic military training period as a recruit wherein it was found that the disability suffered by the applicant was existing prior to his enrolment meaning thereby his disability is a congenital

(by birth) and constitutional in nature and not related to the service. Hence he is not entitled to disability pension. He pleaded for O.A. to be dismissed.

6. After perusing the IMB and the opinion of Brigadier AK Hooda, Specialist doctor in Medicine and Nephrology, we are absolutely clear about the following facts:-

(a) That the applicant as a recruit was admitted to MH, Gopalpur in less than six months of enrolment on 04.10.2011 with kidney related abnormalities. In the MH he was treated and his kidney function resumed within normal limits.

(b) The above mentioned specialist doctor i.e. Brig AK Hooda who examined and treated him diagnosed to be a case of single kidney (unlike normal persons with two kidneys) and recommended him to be invalided out of service as he is unfit as a recruit to undergo training.

(c) Accordingly the Invaliding Medical Board (IMB) examined the applicant and he was invalided out of service on 02.02.2012.

7. In the above scenario we find that the IMB has given 'Solitary Left Kidney (Right Renal Agencesis)' as the disability of the soldier, opined it NANA on the ground that it is 'congenital' i.e. before birth or at the time of birth' as the primary reason to deny him attributability to military service.

We are in agreement with the opinion of the IMB in declaring the disability as NANA because what went wrong at the time of birth by no stretch of imagination can be attributed to as aggravated by military service.

8. Additionally the applicant was undergoing training. He was not even attested. Thus, the status of the applicant as a recruit was akin to a probationer. Law is settled on the point that a probationer can be discharged from service at any point of time by his employer. Thus the respondents as an employer had every right to remove a recruit who could not undertake the rigours of military training and was not likely to meet the fitness standards required from a soldier.

9. We have also noted that medical check-up of recruits at the time of enrolment is done in outdoor locations across the country and in remote areas, which may not have required facilities for a proper and detailed medical check-up to detect constitutional and congenital disabilities. Hence we are satisfied that such deficiencies cannot be detected at the time of enrolment from the notings in the IMB.

10. Army is a combatant force and medical fitness is a must for a recruit. The nation cannot afford to have unfit soldiers to continue in training as a recruit and become a soldier merely because their constitutional or congenital disabilities could not be detected at outdoor recruit rallies. Thus the applicant has failed to make out a case and O.A. is likely to be dismissed.

11. As a result of above discussions, the O.A. lacks merit and deserves to be dismissed. Accordingly the O.A. fails and is hereby **dismissed**.

No order as to cost.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice Virender Singh)**  
**Chairperson**

Dated: September, 2019

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