

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 311 of 2018

Monday, this the 30th day of September, 2019

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

No. 2696571-X Ex-Rect, Shailendrabeer Singh, S/o Shri Indrapal Singh, R/o Village Padhara, Post Padhara, Tehsil- Bindki, District Fatehpur, U.P.

..... Applicant

Counsel for the : **Shri Pankaj Kumar Shukla, Advocate**
Applicant

Versus

1. Union of India through Secretary Ministry of Defence (Army), South Block, New Delhi 110010.
2. Chief of the Army Staff, IHQ MoD (Army), Army HQ, South Block, New Delhi.
3. O.I.C. Records, The Grenadiers, Post Bag No.17, Jabalpur-482001.
4. PCDA (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Counsel for the : **Shri Shyam Singh, Advocate**
Respondents. Addl. Central Govt. Standing Counsel

ORDER

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

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the grant of disability pension with the following prayers:

- A. To issue/pass an order or directions to set-aside/quash the arbitrary order of rejection of the claim for disability pension passed by the respondent no.4 whose information given by O.I.C. Records, The Grenadiers, Post Bag No.-17, Jabalpur- 482001 under their letter Dated 31.01.2002 and order dated 19.04.2018.
- B. To issue/pass an order or direction to the respondents to grant disability pension @ 20% to the applicant and also "Rounding off" the disability pension @ 50% in light of Apex Court judgments.
- C. 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.
- D. To allow this original application with costs.

2. The necessary facts in brief as borne out from the pleadings of the parties are that the applicant was enrolled in the Grenadiers Regiment on 19.07.2000 and was invalided out of service on 10.02.2001 in low medical category 'EEE' under Army rule 13 (3) iv during the basic military training itself. The disability of the applicant was assessed at 20% for two years, opining it as neither attributable to nor aggravated by Military service (NANA). The claim of the applicant for disability element was processed to Principal Controller of Defence Account (Pensions), Allahabad, which was rejected by it vide letter dated 07.01.2002 as a NANA case. The aforesaid decision was communicated to the applicant vide letter dated 31.01.2002. The applicant instead filing an appeal against the aforesaid decision preferred W.P. No. 703 of 2002 before the Hon'ble High Court of Judicature at Jabalpur, M.P. to quash the discharge order and for his reinstatement in service, which was disposed of by

the Hon'ble High Court in the light of a decision of Hon'ble Apex Court dated 11.07.2002 in LPA No.111/2002, **Union of India vs. No. 2695668 Ex Rect Chhittarmal Gurjar** with a direction to the respondents to conduct fresh medical examination of the applicant by Army Doctors other than those who had done earlier medical examination. Accordingly the medical examination of the applicant was conducted and the applicant was again found medically unfit for further service. Thereafter the applicant served a representation dated 26.04.2016 for grant of disability pension which was suitably replied by the respondents. Subsequently the applicant submitted an appeal dated 30.06.2016 for grant of disability pension and rounding off benefit thereon, which was also suitably replied by the Grenadiers Records vide letter dated 24.08.2016 apprising that he may prefer a 'Time Barred Appeal' but the applicant did not submit any Time Barred Appeal. Thereafter the applicant filed OA No.Nil of 2017 in this Tribunal for grant of disability pension and rounding off benefits, which was disposed of vide order dated 01.09.2017 with a direction to the appellate authority to decide the pending appeal dated 30.06.2016 in the light of decision of Hon'ble Apex Court (supra) by speaking and reasoned order expeditiously. Consequent upon the aforesaid direction the appeal of the applicant was considered and rejected vide letter dated 19.04.2018 and the same was communicated to the applicant vide letter dated 15.05.2018. In the aforesaid back ground now the applicant has preferred the

present petition for the grant of disability pension and rounding off benefits.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in Army in medically fit condition and thereafter he has been invalided out in Low Medical Category from army service, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension.

4. The respondents have filed counter affidavit denying the claim of the applicant. While rebutting arguments of learned counsel for the applicant, learned counsel for the respondents submitted that the applicant was discharged from service in low medical category 'EEE' under Army rule 13 (3) iv, as he was diagnosed with "CSOM (RT) with Mild Conductive Hearing Loss (382)" during the basic military training itself, which was considered as neither attributable to nor aggravated by military service and rather existed prior to enrolment of the applicant in the Army service as opined by the IMB and as such, he has rightly been denied disability pension. Learned counsel also submitted that he was considered unlikely to become an efficient soldier, who had rendered only 06 months and 22 days service in the Army. Therefore, it has been submitted that the applicant is not entitled to disability pension in accordance with Para 173 of the Pension Regulations which clearly states that disability pension is admissible to an individual who is invalided

out from service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or more.

5. We have heard learned counsel for the applicant Shri Pankaj Kumar Shukla and Shri Shyam Singh, learned counsel for the respondents and perused the record.

6. We have perused the IMB carefully and noticed that the IMB has clearly opined that the disease existed prior to enrolment of the applicant in the Army service. This disease relates to chronic inflammation of the middle ear. It has also come on record that in addition to the initial IMB dated 18.01.2001 of the applicant, which he has filed as Annexure No.4 to the O.A., again fresh medical examination of the applicant was conducted pursuant to the order of the Hon'ble High Court of Judicature at Jabalpur, M.P. from 22.08.2003 to 25.08.2003 by Army Doctors other than those who had conducted IMB dated 18.01.2001 and the applicant was again found medically unfit suffering from same disability. The disability with which the applicant was found suffering is a chronic inflammation of middle ear leading to hearing loss and the same disability has been found by the Doctors on two separate occasions. In such circumstances we are in agreement with the opinion of the IMB that the applicant had this disability related with chronic inflammation problem before his enrolment in the Army and by no stretch of imagination it

can be said that the disease which surfaced within four months of enrolment is attributable to or aggravated by stress and strain of Army service.

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

8. There shall be no order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(JusticeVirender Singh)
Chairperson

Dated : September ,2019

JPT/AKD