

Court No. 1

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

Original Application No. 222 of 2017

Thursday , this the 5th day of November , 2020

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

Ser. No. 8973752-T Akash Vishwakarma, son of Shri Mahesh Narayan, resident of 191, Hanumant Vihar, Post Office – Galamandi, District – Kanpur (U.P.), Pincode – 208021.

.... Applicant

Ld. Counsel for the: **Shri V.P. Pandey**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Air Staff, Air Headquarters, Vayu Sena Bhawan, New Delhi-110011.
3. Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi-110010.
4. Officer-in-Charge, Air Force Record office, Subroto Park, New Delhi.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)-211014.

... Respondents

Ld. Counsel for the: **Shri Rajiv Pandey**, Advocate
Respondents. Central Government Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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:-

- “(a) Issue/pass an order or direction of appropriate nature to the respondents to quash/set-aside the order dated 11 December 2015 (Annexure No. A-1) by which the disability pension claim of the applicant was rejected considering it neither attributable to nor aggravated by Air Force service.*
- (b) Issue/pass an order or direction to appropriate nature to the respondents to grant disability pension to the applicant with effect from the date of his discharge i.e. 27 October 2015 (PM).*
- (c) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) Allow this application with exemplary costs.”*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Air Force on 01.07.2015 and invalided out of service after rendering 119 days of service on 27.10.2015 in low medical category P5/ApGp due to disease **“SEIZURE DISORDER (FRESH ICD NO 40.8)”** with disability @ 30% for five years (Net assessment NIL) and considered it neither attributable to nor aggravated (NANA) by Air Force service. Disability pension claim of the applicant was rejected by the competent authority vide order dated 11.12.2015. The applicant preferred Original Application No. 128 of 2016 against the above mentioned rejection order which was dismissed by this Tribunal vide

order dated 02.05.2016 on the ground of alternative remedy being available. Thereafter, applicant preferred First Appeal dated 09.06.2016 which has not been decided by the respondents. Feeling aggrieved the applicant has filed this Original Application.

3. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Indian Air Force in physically and mentally fit condition. During the routing physical training he was reported sick on 20.07.2015 with history of jerky movement in all 04 limbs while running. He was referred to Command Hospital Air force Bengaluru for the opinion of Neuro physician from where he was admitted at Military Hospital Belagavi and thereafter transferred to Command Hospital Air Force Bengaluru on 23.07.2015 for further evaluation by Neuro Physician. Thereafter, he was transferred to Military Hospital Belagavi on 29.07.2015 as case of Syncope and Collapse with differential Diagnosis Syncope. The applicant as reported in AFMSF-7A had an episode of Seizure on 05.08.2015 and was therefore detained in SMC for observations and on 09.08.2015 and was admitted at CHAF Bangaluru. The applicant was opined by Senior Advisor in Medicine and Neuro physician on 22.08.2015 who recommended that he was unfit to undergo recruitment training and military service hence to be invalided out of service in medical category P5/ApGp and brought before the Invaliding Medical Board which recommended to be invalided out. Hence, applicant was discharged from service on 27.10.2015.

4. Ld. Counsel for the applicant further submitted that as per rules and regulations on the subject, the applicant is entitled to grant of

disability pension as the disability took place while in service and it shall be presumed to be attributable to and aggravated by the Air Force Service. For this, Ld. Counsel for the applicant has relied upon the Hon'ble Apex Court judgment in the case of *Dharamvir Singh vs. Union of India & Others*, reported in 2013 (7, SCC 13), *Sukhvinder Singh vs. Union of India & Others*, reported in 2014 STPL (Web) 468 SC, *Veer Pal Singh Versus Secretary, Ministry of Defence*, reported in (2014) 1 Supreme Court Cases (L&S) 69, *Nakhat Bharti etc. Etc. Versus Union of India & Others* (T.A. No. 48 of 2009) (decided by Armed Forces Tribunal, Principal Bench, New Delhi on 28.10.2009), and *Ex. Rect. Tatarao vankala Versus Union of India & Others* (O.A. No. 73 of 2014) (decided by Armed Forces Tribunal, Regional Bench, Chennai on 05.11.2014) and pleaded that the applicant is entitled to disability pension.

5. On the other hand, Ld. Counsel for the respondents submitted that the applicant has served for only 119 days as a recruit and has been invalided out from service in low medical category P5 with IMB opining the disability to be NANA, hence, he is not eligible for grant of disability pension in terms of para 153 of pension Regulations for the Air Force, 1961 (Part-I). He further submitted that since applicant was not fulfilling the primary conditions for grant of disability pension as laid down in Para 153 of Pension Regulations for the Air Force 1961 (Part-I), his claim for grant of disability pension has rightly been rejected by the competent authority. He has thus pleaded for O.A. to be dismissed.

6. We have heard Ld. Counsel for the parties and perused the material placed on record. We have also gone through the IMB report dated 27.08.2015.

7. On careful perusal of the record it emerges out that the applicant was enrolled in the Air Force on 01.07.2015 and was brought to SMC with history of jerky movement in all 04 limbs while running in routine physical training and he fell down with unconsciousness for 1 - 2 minutes on 20.07.2015 i.e. only after 20 days of the recruitment. Based on the medical board opinion, the applicant was placed in medical category P-5 and was recommended to be invalided out from service in low medical category. Accordingly, Invaliding Medical Board was held on 27.08.2015 and the applicant was invalided out from service for **“SEIZURE DISORDER (FRESH ICD NO 40.8)”**.

9. We have given our anxious consideration on submissions made by both the parties and are of the considered opinion that on the date of IMB i.e. 27.08.2015 the applicant had three episodes of generalised seizures in last one month. The disease was detected within a short span of his enrolment i.e. 20 days and thus it may be easily inferred as a constitutional disease and cannot be considered as attributable to or aggravated by the Air Force service. Since it was a constitutional disease, the same could not be detected during medical examination at the time of enrolment. Additionally, status of a recruit under training is akin to a probationer and respondents have every right to reject a trainee from training and service if he does not meet the medical standards required by the organisation.

9. Apart from it, in identical factual background the Co-ordinate Bench of this Tribunal has dismissed *T.A. No. 1462/2010, Bhartendu Kumar Dwivedi* vide order dated 23.05.2011 wherein the applicant was enrolled on 21.01.2000 and was discharged on 23.05.2000 as he was suffering from Schizophrenia. Said disability was assessed @ 80% for two years and it was opined by the Medical Board to be neither attributable to nor aggravated by the military service. Said order of this Tribunal has been upheld by the Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 filed against the order of this Tribunal had been dismissed not only on the ground of delay and latches but on merits also.

10. In view of the above and the case laws cited being based on different facts and footings being not applicable in the matter, we find that the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 05 November, 2020

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