

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1

O.A. No. 9 of 2020

Ex Rect Madan Singh Danu
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>10.12.2020</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Heard Shri R. Chandra, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents.</p> <p>2. 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:-</p> <p style="padding-left: 40px;">“(I) Hon'ble Tribunal may be pleased to set aside the Impugned Order dated 24/01/2000 (Annexure No A-1).</p> <p style="padding-left: 40px;">(II) Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 21/11/1996 with the interest at the rate of 18% per annum.</p> <p style="padding-left: 40px;">(III) Hon'ble Tribunal may be pleased further to grant benefit of rounding of disability pension @ 50 percent in terms of Ram Avtar's case.</p> <p style="padding-left: 40px;">(IV) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.”</p> <p>3. The factual matrix of the case are that applicant was enrolled in the Indian Army on 30.04.1996 and invalided out of service after rendering six months and 20 days of service on 20.11.1996 in low medical category EEE (Permanent) due to disease “RHD SEVERE MITRAL STENOSIS WITH MILD AR&MR” with disability @ 60% for two years and considered it neither attributable to nor aggravated (NANA) by military service. Disability pension claim of the applicant was rejected by the competent authority vide order dated</p>

21.10.1997. Thereafter, applicant preferred an appeal which was rejected vide order dated 21.02.2000. Aggrieved by denial for grant of disability pension, the applicant has filed this Original Application.

4. Ld. Counsel for the applicant submitted that applicant was enrolled in the Indian Army in physically and mentally fit condition after carrying out thorough medical examination by a competent medical officer. After enrolment, the applicant reported for training at Garhwal Rifles Regiment Centre. During training, after a period of 3 months from enrolment, his platoon moved to Kotdwar Kodia Camp where after feeling some trouble in summer season he was sent to Landsdown Military Hospital for medical examination/treatment. After 4 days he was transferred to Military Hospital Roorkee and from where after being medically checked up, he was further transferred to Army Hospital, Delhi for detailed investigation/treatment where he was medically checked up, but he was not told about diagnosis of any disease nor was given any medical treatment. On 20.11.1996, he was finally brought before Medical Board and was invalided out from service. Learned counsel further submitted that as per rules and regulations on the subject, the applicant is entitled to grant of disability pension as disability took place while in service and it shall be presumed to be attributable to and aggravated by army service in terms of Government of India letter dated 31.01.2001 and Entitlement Rules for Casualty Pensionary Awards, 1982. Learned counsel for the applicant also placed reliance on the judgment of the Hon'ble Apex Court in the case of **Dharamvir Singh vs. Union of India & Ors**, 2013 AIR SCW 4236 and **Sukhvinder Singh vs. Union of India & Ors** (2014) STPL (Web) 468 SC and pleaded that applicant is entitled to disability pension.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant has served total six months and 20 days, but date of origin of disease is 10th July 1996, i.e. only after two months he was sick and admitted to hospitals. Thereafter, IMB was held on 31.10.1996, and finally he was invalided out from service in low medical category EEE with IMB opining the disability to be NANA, hence, he is not eligible for grant of disability pension in terms of

para 173 of Pension Regulations for the Army, 1961 (Part-I). Since the applicant was not fulfilling the primary conditions for grant of disability pension as laid down in Para 173 of Pension Regulations for the Army 1961 (Part-I), his claim for grant of disability pension has rightly been rejected by the competent authority. He pleaded for O.A. to be dismissed.

6. On careful perusal of the records and also going through the IMB proceedings, it emerges that the applicant was enrolled in the Army on 30.04.1996 and during the training period, he was admitted to Military Hospitals Landsdown and Roorkee for treatment, and thereafter transferred to Army Hospital, Delhi for detailed investigation/treatment where he was thoroughly checked up by the specialists. On 20.11.1996 he was finally brought before Medical Board and was invalided out from service. The opinion of Specialist and finding of Medical Board dated 31.10.1996 is as under :-

“This 20 yrs old rect with three months of service was admitted to this hospital on 10 July 1996 with complaints of breathlessness on exertion and occasional cough for last 20 days. He was tfd to AH Delhi Cantt via MH Roorkee on 15 Jul 96 as a case of cardiac murmur. He was seen by an cardiologist and diagnosed as PHD with severe Hitral Stenosis with mild AR and mild MR. Cardiologist AH Delhi Cantt has recommended surgical therapy and opined that he being rect to be invalided out of service in med cat EEE.

Recommended to be invalided out of service in med cat EEE as he will not make a fit soldier.”

7. We have given our anxious consideration on submissions made by both the parties and are of the considered opinion that the applicant was suffering from **“RHD SEVERE MITRAL STENOSIS WITH MILD AR&MR”** prior to joining the service due to following reasons :-

(a) The disability was detected during training after two months of his enrolment on 10.07.1996.

(b) This disability is per say not a disease but a genetic and constitutional matter and cannot be considered as attributable to or aggravated by military service under any circumstances.

(c) Since disability of the applicant was constitutional in nature, hence the same could not be detected during the initial medical examination at the time of enrolment, however, it has been detected in the

second mandatory medical examination which is done in greater detail.

(d) Additionally, 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.

8. Apart from, in identical factual background Co-ordinate Bench of this Tribunal 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 military service. Said order of this Tribunal has been upheld by Hon'ble Apex Court as Civil Appeal arising out of Dy. No. 30684/2017 has been dismissed on delay as well as on merits.

9. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is, accordingly, dismissed.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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