

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 160 of 2017

Monday, this the 09th day of July, 2018

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”

Tejbir Singh (No 1065802 Ex Rect), S/o Sri Bikram Singh, R/o Village & Post- Kurli, District- Buland Shahr, State-Uttar Pradesh.

..... Applicant

Ld. Counsel for the:
Applicant

Shri R. Chandra, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office New Delhi- 110011
3. The Officer In-charge, Armoured Corps Records Ahmednagar-414001.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad, U.P.

.....Respondents

Ld. Counsel for the:
Respondents.

Shri Md Zafar Khan, Advocate
Counsel for the respondents.

ORDER

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

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability

pension. He is challenging the validity of findings of the Invaliding Medical Board (for brevity IMB) holding the disability of the applicant as neither attributable nor aggravated by military service.

2. For ready reference the prayers made by the applicant in the instant petition are reproduced hereunder:-

“(I) The Hon’ble Tribunal may be pleased to set aside the orders dated 12/05.1982 (Annexure No. 1).

(II) The Hon’ble Tribunal may be pleased to summon the Invaliding Medical Board from the custody of respondents and set aside the same.

(III) The Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 22/10/1980 along with its arrears and interest thereon at the rate of 18% per annum.

(IV) Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.”

3. The brief facts of the case are that the applicant was enrolled in the Indian Army in Rajput Regiment on 29.08.1980. While the applicant was undergoing training, he was invalided out from service on 21.10.1980 i.e. after 01 month and 22 days’ service in medical category BEE for TUBERCULOSIS under Rule 13(3) item IV of Army Rules 1954. The Invaliding Medical Board opined that the disability with which the applicant was suffering was found to be neither attributable to nor aggravated by Military Service. The said Invaliding Medical Board was held at Military Hospital Ahemadnagar.

4. The respondents in their counter affidavit have denied the claims of disability pension by the applicant. It has been pleaded by the respondents that the applicant was invalided out of service on 21.10.1980 in medical

category BEE on account of his having been found suffering from TUBERCULOSIS under Rule 13(3) item IV of Army Rules 1954. The disability with which the applicant was found suffering was held neither attributable to nor aggravated by Military Service. The Invaliding Medical Board also opined that the disability was pre-existing one as it was detected within a short period of 01 month and 22 days' service of the applicant having joining training. It has also been pleaded by the respondents that the applicant being non pensioner, his service documents have been destroyed in accordance with Para- 592 to 596 of Defence Service Regulations for the Army, 1987 (Revised). It has further been pleaded by the respondents that since the applicant preferred the present application after a lapse of approximately 36 years of his discharge from service, the Armoured Corps Records is unable to furnish full details of the applicant's service ,including opinion of Invaliding Medical Board. However, a copy of relevant page of Long roll has been annexed by the respondents as Annexure No.CA-1 to the counter affidavit. It has further been stated by the respondents that the claim of the applicant for grant of disability pension was rejected by the PCDA (P), Allahabad vide letter No. G3/82/1501/VII dated 10.03.1983 as disability was regarded as neither attributable to nor aggravated by Military Service.

5. We have given our anxious consideration to the material on record and the arguments raised by learned counsel for both the parties.

6. The short point involved in the present case for adjudication is that as to whether the applicant who was invalided out only after his rendering a service of about 52 days in the Army during training period in medical category BEE for TUBERCULOSIS is entitled to disability pension ?. Hence

to decide this issue, before us it is an inescapable requirement to find the attributability factor and percentage of disability as assigned by Invaliding Medical Board. It is also important for us to know the opinion of the Invaliding Medical Board as to why they have opined the disease to be neither attributable to nor aggravated by Military Service. The settled law on attributability of disability arising out of ***Dharamvir Singh vs. Union of India & Ors***, (2013) 7 SCC 316 cannot be applied without the scrutiny of the opinion of Invaliding Medical Board. Thus the question of attributability of disease cannot be decided in vacuum in the absence of IMB proceedings. We have perused the Long Roll and found that the Long Roll has no meaningful information on this issue. It is pertinent to point out here that in the instant case we have taken note that the applicant was invalided out only within a period of 01 month and 22 days or 52 days of service. In the normal course there is at least 40 to 50 days' gap between detection of a disability, follow up medical check up and invalidment out due to procedural requirements. Though medical documents of IMB are not available, however in all probability this disease has been detected within first week or second week of his joining training as a recruit. In such a short period of time the disease 'TUBERCULOSIS', therefore, cannot be reasonably regarded to have had developed on account of military service. However, in the circumstances mentioned above and in absence of the medical documents i.e. IMB proceedings, no benefit of doubt, in this situation can be given to the applicant.

7. It is relevant to note that the report of Invaliding Medical Board is not available on record as the respondents have categorically pleaded that the same has been destroyed in accordance with Para- 592 to 596 of Defence Service Regulations for the Army, 1987 (Revised). Additionally the applicant

has failed to provide any credible document/ evidence to support his claim and is banking on the respondents to provide the same.

8. In view of the above aspects, benefit of doubt on attributability can not be extended to the applicant. As a result O.A. lacks merit and deserves to be rejected.

9. Accordingly, the petition fails and is hereby **rejected**.

10. There shall be no order as to cost.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S.Rathore)
Member (J)

Dated: July 09, 2018

JPT/-