

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
(CIRCUIT BENCH AT NAINITAL)**

**Original Application No. 434 of 2021**

Tuesday, this the 22<sup>nd</sup> day of February, 2022

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

No. 14702892X Ex Rect Vinod Kumar  
S/o Shri Suresh Nand  
R/o Village- Camera, PO – Silyara, Tehsil – Ghansali,  
District – Tehri Garhwal

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Nitin Singh** holding brief of  
**Shri C.S. Rawat**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), New Delhi.
3. Additional Director General Adjutant Generals Branch, West Block III R.K.Puram, New Delhi.
4. In-charge Pension and Entitlement Directorate of Indian Army Adjutant Generals Branch, Maudelines, 104 Cavalry Road Delhi Cantt.
5. Senior Record Officer, Kumaon Regiment, Centre Ranikhet, District Almora.
6. P.C.D.A.P. (Pension), Allahabad.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Neeraj Upreti**,  
Central Govt Counsel

**ORDER**

1. The instant Original Application has been filed on behalf of the petitioner under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has sought following reliefs:-

“That this Hon’be Tribunal may graciously be pleased to summon the entire records and direct the respondents to sanction and grant the disability pension withheld pay, which are applicable and further more to sanction/provide the disability pension from 11.10.1993 with arrears and other retiral dues to the petitioner from 11.10.1993 with arrear and appropriate interest, otherwise petitioner shall suffer irreparable loss and injury.

Such other suitable order is deemed fit and proper in the facts and circumstances of the case also kindly be pleased to meet in the interest of justice.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 26.06.1993 and was invalided out of service w.e.f. 11.10.1993 in low medical category ‘EEE’ due to disability **“DEFORMITY LEGS PREPUCIAL ADHESIONS”**, assessed @ 15-19% for two years and considered it neither attributable to nor aggravated by military service (NANA). The applicant submitted a representation dated nil which was rejected by the respondents vide order dated 03.01.2019. Being aggrieved, applicant has filed this Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. The applicant is entitled for disability pension under the provisions of Rule 173 of Pension Regulations for the Army, 1961 (Part-1). He pleaded that

various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since the disability is assessed @ 15-19% i.e. below 20%, therefore, condition for grant of disability pension does not fulfil in terms of Regulation 173 of Pension Regulations for the Army, 1961 (Part-I) and Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I) and, therefore, the competent authority has rightly denied the benefit of disability pension to applicant. He pleaded for dismissal of Original Application.

5. We have given our considerable thoughts to both sides and have carefully perused the records including Invaliding Medical Board (IMB) proceedings. The question in front of us is straight; whether the disability is attributable to/aggravated by military service and, if so, whether it is above or below 20% and also whether applicant was invalidated out of service on account of the disability?

6. It is undisputed case of the parties that applicant was enrolled in the Indian Army on 26.06.1993 and was invalidated out of service w.e.f. 11.10.1993 in low medical category 'EEE' due to disability **"DEFORMITY LEGS PREPUCIAL ADHESIONS"**, assessed @ 15-19% for two years and considered it neither attributable to nor aggravated by military service (NANA).

7. As per Regulation 53(a) of Pension Regulations for the Army, 2008 (Part - I), disability pension is eligible only when the disability is assessed at 20% or more and accepted as attributable to or aggravated by military service. Since, applicant's disability element is 15-19% for two years as neither attributable to nor aggravated by military service, applicant does not fulfil the requirement of Regulation 173 Pension Regulations for the Army, 1961 (Part-1) and 53(a) of Pension Regulations for the Army, 2008 (Part-I).

8. The applicant was invalided out of service being low medical category 'EEE' as recommended by IMB. Further, the competent authority while adjudicating the disability pension claim of the applicant has also examined applicant's disability in the light of relevant rules and finally rejected being neither attributable to nor aggravated by military service. We are in agreement with the opinion of IMB proceedings. Additionally, a recruit is akin to a probationer and hence prima facie the respondents as an employer have a right to discharge a recruit who is not meeting the medical requirement of military service. We are in agreement with the opinion of IMB that the applicant's disability is neither attributable to nor aggravated by military service and he is not entitled to disability pension.

9. Apart from it, in identical factual background this Tribunal dismissed T.A. No. 1462/2010, **Bhartendu Kumar Dwivedi vs. Union of India and others**, vide order dated 23.05.2011 wherein applicant was enrolled on 21.01.2000 and was discharged on 27.04.2000 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 the Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 preferred against the aforesaid order, has been dismissed on delay as well as on merits vide order dated 20.11.2017.

10. In addition to above, a bare reading of Regulation 53(a) of Pension Regulations for the Army, 2008 (Part-I), makes it abundantly clear that an individual being assessed disability below 20% is not entitled to disability pension. The Hon'ble Supreme Court in Civil Appeal No 10870 of 2018 **Union of India & Ors vs Wing Commander SP Rathore**, has made it clear vide order dated 11.12.2019 that disability element is inadmissible when disability percentage is below 20%. Para 9 of the aforesaid judgment being relevant is quoted as under:-

*“9. As pointed out above, both Regulation 37 (a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.”*

11. In view of the discussions made above, Original Application lacks merit and same is accordingly **dismissed**.

12. Pending application, if any, stands disposed of.

13. No order as to costs.

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

Dated: February, 2022

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