

COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

C.

OA 1601/2019

Ex Hav Manoj Kumar Sahu Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. U.S Maurya, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
22.07.2025

Judgment in this matter has been pronounced today vide a separate signed order. At the time of hearing, certain original documents were kept by us for perusal. Since the judgment in the matter has now been pronounced, these documents be returned to the respondents after taking due acknowledgement.

(JUSTICE NANDITA DUBEY)
MEMBER (J)


(RASIKA CHAUBE)
MEMBER (A)

/RB/

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Ex Hav Manoj Kumar Sahu Applicant
Versus
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For Applicant : Mr. U.S. Maurya, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

Dated: 22nd July, 2025

CORAM :

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

OA 1601/2019

After being denied grant of disability pension, invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA seeking the following reliefs:

- “(a) Impugned order dated 29.05.2019 be set aside passed by the respondents to the extent this order deny the grant of Disability Pension to the applicant as disability “less than 20%”, whereas applicant disability is 20% in Release Medical Board (Annexure A-5 (Colly)).*
- “(b) Direct respondents to grant arrears of disability element w.e.f. 01.07.2007 (date of discharge) @ 50% (after rounding off from 20% to 50%).*
- “(c) Direct respondents to grant arrears of disability element wef 01.07.2008 (date of discharge) with 9% interest as*

applicant case squarely covered by Hon'ble Supreme Court in Davinder Singh Vs. Union of India and Ors. (Civil Appeal No.9946 of 2016 order dated 20.09.2016) and this Hon'ble Tribunal in Ex. Sgt. Girish Kumar Vs. Union of India and Ors. (OA No.1439/2016 order dated dated 01.12.2017) Larger Bench.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."

2. The brief facts of the case, as per the applicant, leading to the filing of this OA are that the applicant, after thorough medical and physical examination, was enrolled in the Indian Army as New Entry Havildar (Education Inspector) on 25th September, 1991. After 11 years of long service while posted at Bhuj (Gujarat) for the first time on 4th November, 2002, the applicant was diagnosed for the disease **Recurrent Vricocele** (LT) and as a result whereof he was put in Low Medical Category which ultimately resulted in his discharge from service on 30th June, 2007 before completion of his term of engagement. The Release Medical Board held on 26th March, 2007 assessed the disability of the applicant @ 20% aggravated due to stress and strain of military service. The assessment was made till further operative measures were taken. The applicant, however, was denied disability element of disability pension and was granted only service element of pension.

3. It is further submitted that although the applicant met the twin conditions as spelled out in Para 173 of Pension Regulations for the Army (Part I) 1961, he was denied disability element of disability pension. Referring to Para 173A of the Pension Regulations for the Army (Part I) 1961 and MoD letter No.3/57/2001/D (Pen A & AC) dated 11th April, 2002 and also PCDA (P) Allahabad circular No.301 dated 27th May, 2002, the submission of the applicant is that individuals discharged from service on medical grounds before completion of their normal term of engagements are to be considered invalided out of service and are thus entitled to be granted disability pension. In this regard, learned counsel for the applicant has also referred to Para 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982 to state that *“Invaliding from service is a necessary condition for grant of disability pension.”*

4. Learned counsel further referring to the Hon'ble Delhi High Court judgment in the case of Mahavir Singh Narwal Vs. Union of India and Anr. dated 5th May, 2014 has submitted that personnel who sought premature discharge or discharged on their own request had been allowed disability pension and in the case of Raju V Vs. Union of India [(2009) 1 KHC 627), the Hon'ble Kerala

High Court held that a person cannot be denied disability pension on the ground that he was discharged from service on his own request on compassionate grounds.

5. In nutshell the learned counsel for the applicant has relied upon the following case and/or Regulation:

Para 173 of the Pension Regulations for the Army (Part I) 1961	To claim attributability and aggravation by military service.
Letter No.3/57/2001/D/(Pen A & AC) dated 11.4.2002	To contend that persons discharged before completion of service tenure in Low Medical Category are to be considered invalided out of service which is condition for grant of disability pension
Mahavir Singh Narwal Vs. Union of India and Anr.	To say that disability pension can be granted even if premature/volunteered discharge is taken.
Sukhwinder Singh Vs. Union of India and Ors.	To submit that even if the disability is assessed below 20%, disability pension can be granted
D.S. Nakara	Pension is a right and not a bounty

6. Per contra the respondents have stated that the applicant was not invalided out of service in fact he had shown his unwillingness to continue in service and refused to go for the procedure suggested by the Medical Board, because of which he was discharged from service on 30th June, 2007 in Low Medical Category with the disability Varicocle Left (OPTD). Their Further contention is that during the period from March 2003 to October 2008 the applicant had been downgraded and placed in different

medical categories ranging from P3 (T-24) to P2 (Permanent) for different periods of time between six months to two years and was recommended operative management to improve his disability.

7. Inter alia, the respondents have also contended that since the applicant expressed his unwillingness to undergo the minor surgery for his disability twice on 9th October 2004 and 13th October, 2006 and also to continue in service, the applicant was brought before the Release Medical Board, who after examination, opined the disability "Recurrent Varicocele (LT) (OPID) (183) aggravated by military service but for the purposes of pension assessed it NIL with the remarks *"as the individual has refused operative management, which the medical board considers could reduce his disability"* and vide AEC Records Letter No. PEN GO/9511687L/DP/65 dated 1st January, 2008, the applicant was informed about his non entitlement of disability element of disability pension.

8. It is also submitted that in response to the representation of the applicant submitted after more than 11 years of his discharge on 22nd April 2019 to Secretary MoD, Chief of Army Staff and Directorate of Indian Army Veterans, the AEC Records vide their letter dated 29th April 2019 informed the applicant that since his

disability was assessed less than 20%, he is not entitled to grant of disability element of disability pension.

9. The learned counsel for the respondents also refers to Regulation 173 of the Pension Regulations for the Army (Part I) 1961 to contend that pension could be granted to an individual invalided out of service on account of a disability aggravated by or attributable to military service and assessed at 20% or more and since the disability of the applicant was assessed NIL with the remarks that the disability could be reduced if the applicant had shown his willingness for operative management accordingly the applicant is not entitled to grant of disability element of disability pension. So far as the claim for broad banding is concerned, it is contended by the respondents that it is applicable in the case of an individual invalided out of service. Respondents have further submitted that since the applicant has not exhausted the remedy of First and Second Appeal before coming to this Tribunal, the OA has to be dismissed.

10. We have heard at length learned counsel on either side and have also perused the Original Medical Records produced before us, the documents available on record and the case law relied upon or referred to by learned counsel for the parties

during the course of their arguments. The sole question that remains to be answered is ‘whether the disease of Varicocele can be caused by Military Service and if so is the applicant entitled to disability element of pension even after showing his unwillingness to continue in service and refusal to go for the minor medical procedure suggested by the medical experts.’

11. Varicoceles in medical terminology are defined as dialation of the veins of the scortum more commonly called pelvic compression syndrome. They are found both in adolescent male and men evaluated for infertility and represent a reversible cause of male factor infertility. In the medical study the techniques adopted for procedural treatment of varicoceles are laparoscopic, microscopic and open techniques and the percentage of recurrence, as per medical study, ranges between 1.9% to 17% as mentioned hereunder:

Laprosopic Procedure	17%
Microscopic Procedure	1.9%
Open Procedure	13%

12. It is seen from the above that Varicocele (LT) (OPTD) can be better managed with microsurgical varicocelectomy surgery.

The recurrence rate and complications compared to other techniques in this surgery are very low and also it has quicker recovery time.

13. By referring to the judgments and regulations the emphasis of the applicant is mainly on the fact that he had been boarded out of service with the disability and is thus entitled to disability element of pension. In our considered opinion the individual was not boarded out of service instead the applicant sought discharge prior to his term of engagement after showing his unwillingness for operative management by way of a minor surgery. An individual's discharge in low Medical category does not mean being boarded out or invalided in low medical category hence does not entitle him to seek benefits of disability element of pension.

14. The first and foremost thing to be seen is whether the ailments with which the applicant is suffering has any causal connection with service. The primary cause of Varicocles, a condition where veins in the scrotum enlarges, is malfunctioning of valves in the spermatic veins. A genetic component may also play a role in some cases, with family history potentially increasing the risk.



15. In the case at hand it is seen that the disability of varicocele is a kind of disease which causes infertility and the same in no way can be caused by military service, thus there is no causal connection between the disease of the applicant and the military service. Therefore, it is held that the disease cannot be caused due to military service.

16. As far as aggravation is concerned, it is mainly because the applicant showed his unwillingness to go through a minor operative procedure suggested by the Medical Experts; the applicant refused to go for the operative procedure and thereafter showed his unwillingness to thereafter continue in service. In this connection it is stated that the percentage of recurrence of Varicoceles while adopting microsurgical varicocelectomy surgery is bare minimum, i.e., 1.9% and it also has quicker recovery time. When there is a treatment available with negligible rate of its recurrence, the refusal of the applicant to undergo surgery does not seem to be reasonable since the aggravation in the disease which itself cannot be caused due to military service does not merit disability element.

17. It is also reiterated that the applicant sought discharge on the ground of unwillingness, therefore, it cannot be said that he

was invalided out of service instead he sought discharge of his own and was unwilling to continue to serve.

18. Para 4(b) of Chapter V of Guide to Medical Officers (Military Pension) 2002, stipulates that if the Medical Board certifies that operation/medical treatment suggested by them will cure or reduce the existing disability to a lower percentage and the individual refuses to undergo the treatment suggested, he will not be entitled to disability element of pension. However, normal service pension or gratuity, if any, admissible under the Regulations may be granted. From the medical documents available on record, it is established that the Medical Board did opine that if the applicant would have gone for the operative procedure prescribed by them, there would have been reduction in the disability percentage of the applicant. We may also note that, as indicated herein above, microscopic treatment has a very meagre chance of recurrence and the time of recovery is also very short, therefore, we are of the considered opinion that the applicant's refusal to undergo the medical procedure prescribed by the Medical Board was unreasonable and for that reason also he is not entitled to disability element of disability pension.

19. In view of the above we hold that the applicant is not entitled to the reliefs claimed in the OA, hence the OA is dismissed.

Pronounced in the open Court on this 21st day of July, 2025.

[JUSTICE NANDITA DUBEY]
MEMBER (J)

[RASIKA CHAUBE]
MEMBER (A)

/vks/