

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

(Suppl. 4.) O.A. No. 105 of 2021 with M.A. No. 75 of 2021

Ex. Cfn. Majgaonkar Sachin Balasaheb
By Legal Practitioner for the Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Applicant

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>26.08.2022</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>Heard Mr. H.S. Verma, Ld. Counsel for the applicant and Mr. A.J. Mishra, Ld. Counsel for the respondents.</p> <p>This is an Original Application for the grant of disability pension.</p> <p>Being a pensionary matter, delay in filing of Original Application is condoned. Delay condonation application stands decided accordingly.</p> <p><u>O.A. No. 105 of 2021</u></p> <p>Heard Mr. H.S. Verma, Ld. Counsel for the applicant and Mr. A.J. Mishra, Ld. Counsel for the respondents.</p> <p>Original Application is dismissed.</p> <p>For orders, see our order passed on separate sheets.</p> <p>Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <div><div>(Vice Admiral Abhay Raghunath Karve) Member (A)</div><div>(Justice Umesh Chandra Srivastava) Member (J)</div></div> <p>AKD/AMK/-</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

Original Application No. 105 of 2021

Friday, this the 26th day of August, 2022

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

Ex. Cfn. Majgaonkar Sachin Balasaheb (14632566-P), residing at House No. 1676, Birdevnagar, Kaneriwadi, District – Kolhapur (Maharashtra)-416234.

..... Applicant

Ld. Counsel for the: **Mr. H.S. Verma**, Advocate
 Applicant

Versus

1. The Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110001.
2. The Chief of the Army Staff, IHQ of MoD (Army), Sena Bhavan, New Delhi-110011.
3. Senior Record Officer, EME Records, Secunderabad (AP) -500021.
4. PCDA (P) Allahabad, Draupadi Ghat, Allahabad (U.P.)-211014.
5. Commanding Officer, 255, Armed Workshop, C/o 56 APO.

.....Respondents

Ld. Counsel for the
 Respondents.

: **Mr. A.J. Mishra**, Advocate
 Central Govt. Counsel

ORDER

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

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

- (i) *That this petition be admitted;*
- (ii) *That the impugned order dated 04th Nov 2020 and 15 Dec 2005 passed by competent authority be quashed with retrospective effect;*
- (iii) *That the respondents be directed to process the request of Applicant as per set down rules of Armed Forces;*
- (iv) *That the applicant be given all the lawful benefits as may be applicable as per rules;*
- (v) *Alternatively Applicant be given substantial reliefs with all consequential benefits;*
- (vi) *Cost of this petition be provided for;*
- (vii) *To pass such other and further orders as may be deemed necessary on the facts and in the circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Corps of EME of Indian Army on 20.04.1996 and invalided out from service on 23.02.2005 in Low Medical Category under Rule 13 (3) Item III (iii) of the Army Rules, 1954. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Command Hospital (Southern Command), Pune on 28.01.2005 assessed his disability ‘**ALCOHOL DEPENDENCE SYNDROME (F 10.2,)**’

@11-14% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability element of disability pension was rejected vide letter dated 17.11.2005 which was communicated to the applicant vide letter dated 15.12.2005. The applicant preferred petition which too was rejected vide letter dated 01.04.2009. The wife of the applicant also preferred application dated 08.01.2010 which too was rejected. The applicant also submitted CPGRAMS dated 29.10.2020 which was replied by the respondents vide letter dated 04.11.2020. It is in this perspective that the applicant has preferred the present 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 contracted during the service, hence it is attributable to and aggravated by military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off to 50%.

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 of the applicant has been

regarded as @11-14% (less than 20%) and as NANA by the IMB, 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, therefore, the competent authority has rightly denied the benefit of disability pension to applicant. He pleaded for dismissal of Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the IMB proceedings as well as the records. The sole question which needs to be answered by us is whether the disability of the applicant i.e. '**ALCOHOL DEPENDENCE SYNDROME (F 10.2,)**' is attributable to or aggravated by military service?

6. We have given our thoughtful consideration to the issues raised by the learned counsel for the applicant. On careful analysis, we find that '**ALCOHOL DEPENDENCE SYNDROME (F10.2)**' is primarily a disease where an individual cannot control his excessive drinking habits. This disease leads to being drunk while on duty and poor performance during discharge of official duties. It is also very clear that drinking Alcohol and exercise of discipline and moderation while drinking is a matter of personal choice.

7. It is also well known that all efforts are made by Army doctors and the organization to help a soldier who has become a

victim of '**ALCOHOL DEPENDENCE SYNDROME (F 10.2,)**' and only when all efforts fail the soldier is invalided out from service on ground of said disease.

8. Further, Para 6 of Chapter – V of Guide to Medical Officers (Military Pensions), 2002 provides that *“Compensation cannot be awarded for any disablement or death arising from intemperance in the use of alcohol, tobacco or drugs, or from sexually transmitted diseases, as these are matters within the member’s own control. It follows that where alcohol, tobacco or drugs or sexually transmitted diseases have aggravated an accepted disability, it is necessary to exclude the effect thereof in assessing the disablement ascribable to service condition.”*

9. In view of above, as far as attributability of the disability is concerned, we agree with the opinion of the IMB that this disease is neither attributable to nor aggravated by military service.

10. Considering all issues, we are of the considered opinion that Ld. Counsel for the applicant has failed to make out any case in his favour. We agree with the opinion of IMB that the disease of the applicant was neither attributable to nor aggravated by military service. Thus considering that due process has been followed by Army in discharging the applicant from service, we are not inclined to interfere with this process or provide any other relief to the applicant.

11. In view of the above, the **Original Application No. 105 of 2021** deserves to be dismissed, hence **dismissed**.

12. No order as to costs.

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

Dated: 26 August, 2022

AKD/AMK/-