

**FORM NO – 21**  
**(See Rule 102 (1))**

**ARMED FORCES TRIBUNAL, KOLKATA BENCH**

**APPLICATION NO : TA 53 OF 2011 ( CWJC No. 16553/2007)**

**THURSDAY, THIS TWENTYSECOND DAY OF MARCH, 2012**

**CORAM : Hon'ble Mr. Justice Sadhan Kumar Gupta, Member (Judicial)**  
**Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)**

Rajiv Kumar @ Ragiv Kumar,, 14847758  
N-Rect/Clk, son of Sri Mahesh Thakur,,  
Resident of village Ratanpur, P S Majorganj,  
District Sitamarhi

..... Petitioner

-VS -

1. The Union of India, through the Secretary,  
Ministry of Defence, Govt. of India, New Delhi.
2. The Chief of Army Staff, Army Head Quarter,  
Sena Bhawan, New Delhi 110011.
3. The Director General of Sup & TPT (ST 12)  
Quarter Master General's Branch, Integrated  
Head Quarters of MOD(Army), DHQ PO New  
Delhi 110011.
4. The Commanding Officer, no.2 Trg Bn(Sup),  
ASC Centre & College(South), Bangalore,  
Pin 900403, C/o 56 APO.
5. The Commandant, CHAF, Bangalore.
6. The President /Dy Commandant/Medical Board,  
CHAF, Bangalore.
7. The Officer in charge , ASC Records (South)  
Bangalore 560007.

8. BRO, Muzaffarpur, Bihar
9. The Medical Officer, BRO Muzaffarpur, Bihar.

.....Opp.Parties

For the applicant : Mr. Sanjoy Kumar Ghosh, Advocate

For the respondents : Mr. Mintu Kumar Goswami, Advocate

## O R D E R

### Per Justice Sadhan Kumar Gupta, MEMBER (Judicial)

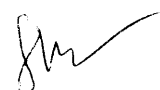
Writ petition No. CWJC 16553 of 2007 was initially filed by the petitioner before the Hon'ble Patna High Court. Thereafter, due to the advent of the Armed Forces Tribunal Act, 2007, same has been transferred to this Bench for disposal and accordingly, it has been renumbered as TA 53 of 2011.

2. The case of the petitioner is that he appeared for recruitment in the Army Service on 14.12.04 and before enrolment, he was sent for proper medical examination before the medical authority. After necessary medical check up, the authorities found the petitioner fit and consequently, he was selected for recruitment and sent for training at Unit No. 2 Trg. Bn(Sup), ASC Centre and College (South), Bangalore. While undergoing such training, the petitioner fell sick and was admitted in the Command Hospital, Air Force, Bangalore on 9.7.05 and after check up it was found to be a case of *stress fracture*. The petitioner was subsequently discharged from the hospital on 12.7.05 to resume his training. On 17.9.05, the petitioner felt pain due to stress of the training and was again admitted in the said Air Force hospital at Bangalore and after due treatment he



was discharged from the hospital on 5.10.05 with medical board's recommendation "low medical category-A3". Thereafter on 31.1.05, the petitioner reported to the hospital for medical review and on 23.1.06, he was discharged from the hospital with recommendation to be invalidated out of service. Consequently on 31.1.06, the petitioner reported to the hospital for attending invalidating medical board, which was held on 13.2.06. As per recommendation of the said board, the petitioner was invalidated out of service and was discharged from the hospital on 2.3.06. The said medical board assessed his disability at 30%. However, at the same time, it was stated that the said disability was not due to stress and strain of military service or aggravated by the said service. After discharge, the petitioner was not given disability pension and consequently, the petitioner filed a representation/appeal before the higher authority for redressal of his grievances. The petitioner has claimed that the disability with which he suffered, was due to stress and strain of military service and as such, he should be granted disability pension. However, the appellate authority also rejected the claim of the petitioner. Finding no other alternative, the petitioner filed the present writ petition before the Hon'ble Patna High Court, which has since been transferred to this Tribunal, as stated earlier.

3. According to the petitioner, at the time of his recruitment, he was duly examined by the medical team, which found him fit for the Army service. Thereafter, due to stress and strain of rigorous training, he suffered such disability and consequently, it should be treated as a disability sustained by the petitioner, which should be attributable to military service and he should be



granted disability pension. It is the further case of the petitioner that he suffered from "*stress fracture*" as per hospital report. However, the medical board treated the injury to be "*Osteoblastoma*", which was not at all proper. Under such circumstances, the petitioner has prayed for setting aside the order denying him disability pension and to pass necessary direction upon the authorities to grant disability pension in his favour.

4. The application has been contested by the respondents by filing counter affidavit wherein the allegations, as made out in the application, were denied on all material points. It is the claim of the respondents that at the time of recruitment, preliminary medical test was done and that time, the depth of the injury, as was there in the body of the petitioner, could not be detected. Subsequently, while on training, the petitioner was admitted in the hospital where he was thoroughly checked and treated and thereafter it was detected that it was a case of "*osteoblastoma*". Consequently, a medical board was formed which opined that the petitioner sustained 30% disability but such disability was not attributable to military service. Under such circumstances, the petitioner could not be granted disability pension, as prayed by him. He was duly informed about it. He then preferred an appeal with the appropriate authority, who after due deliberation, rejected such prayer. According to the respondents, there was nothing wrong on the part of the respondents in not allowing disability pension in favour of the petitioner in view of the facts and circumstances stated above. Accordingly, they have prayed for dismissal of the application.



5. We have considered the submissions of the Id. advocates for both the sides and also perused the medical documents, as filed in connection with the case. It appears from the medical papers that the medical board clearly opined that the disability, as sustained by the petitioner, was not attributable to military service. As such, as per Pension Regulations, the petitioner is certainly not entitled to get any disability pension. However, the Id. advocate for the applicant tried his best to impress upon this Court by producing some documents in order to show the difference between "*Stress Fracture*" and "*Osteoblastoma*". According to him, the disease, as sustained by the petitioner was nothing but "*stress fracture*" and the medical boards were not at all justified in treating the said disease to be "*osteoblastoma*". We respectfully disagree with the submission, as made by the Id. adv. for the applicant. It is the admitted position that the petitioner was duly examined by a competent medical board, which opined that the petitioner was suffering from "*Osteoblastoma*" and the disease was constitutional in nature. It is well settled principle that opinion of the medical board is of paramount importance and the court should not unnecessarily interfere with such finding. We find no material whatsoever to counter the opinion of such medical board and as such, we refrain ourselves from interfering with such finding of the medical board.

6. Ld. advocate for the applicant vehemently argued that since at the time of recruitment the applicant was duly medically examined and found fit, so if any further disease is found with the applicant by the medical board, then it must be considered to have occurred due to stress and strain of the military service. We



however, do not agree with this argument of the learned advocate for the applicant. True it is that the applicant was medically examined along with others at the time of initial recruitment. This type of medical examination is a routine thing and it is held only for the purpose of preliminary finding that apparently a candidate appears to be medically fit. This finding at the time of recruitment test cannot be said to be final and it is always open for the concerned authority to get a particular person duly and thoroughly checked up by a competent medical board subsequently. Since it is the admitted position that during the course of training the applicant fell sick and as a result of that he was placed before the medical board who opined that the disease with which the applicant was suffering was constitutional in nature and not attributable to medical service and as such, we are of opinion that the applicant cannot take advantage of the initial medical examination report, which was held at the time of recruitment test.

7. Ld. advocate for the applicant lastly argued that the petitioner may be allowed a further chance to appear before another medical board for review. However, no material has been produced in support of such contention. We do not find any justification to allow such prayer for further review. Since the medical board was of the clear opinion that the petitioner was suffering from "osteoblastoma" and it was not attributable to military service and constitutional in nature, we are of the opinion that question of further review at this stage, in the absence of any contrary material whatsoever, does not arise at all. As such, we reject such prayer.



8. Considering all such circumstances, we are of the opinion that the petitioner was rightly denied disability pension by the concerned authority on the basis of the medical board's opinion and as such, we do not find any cogent reason for interfering with such finding. Consequently, we hold that this application has got no merit at all and it is liable to be dismissed..

9. In the result, the Transferred Application stands dismissed on contest but without cost.

10 The records, as produced by the respondents, be returned back on proper receipt.

11. Let plain copy of the order handed over to the Id. advocates for both the sides.



(Lt. Gen. K.P.D.Samanta)  
Member(Administrative)



(Justice Sadhan Kumar Gupta)  
Member (Judicial)