

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

Original Application No. 541 of 2020

Wednesday, this the 04th day of August, 2021

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

No 4397185H Ex Gnr Dan Singh Chauhan, S/O Daulat Singh Chauhan, R/O Village-Mallajhula, PO-Pamtori, Tehsil-Didihat, District-Pithoragarh, Uttarakhand.

.... **Applicant**

Ld. Counsel for the: **Shri NK Papnoi**, Advocate.
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Director General, Medical Services (Army), AG's Branch, L-Block, New Delhi-110001.
3. Record Officer, Topkhyana Abhilekh, Artillery Records, Nasik Road Camp-422102, APS PIN-908802.
4. Commandant, Military Hospital, Bareilly.

... **Respondents**

Ld. Counsel for the: **Ms Pushpa Bhatt**, Advocate
Respondents Central Govt Counsel.

ORDER (Oral)

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

- (I) To issue order or direction to the respondents authority for granting the pensionary/disability pension to the applicant who was discharged from his military duties on the medical ground w.e.f. 19.06.1991 giving any medical or disability pension also after calling the entire records from the respondents.*
- (II) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.*
- (III) To award the cost of this petition to the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Indian army on 14.04.1987 and was invalided out of service w.e.f. 19.06.1991 in low medical category '**EEE (Psychological)**' due to '**SCHIZOPHRENIA (295)**'. The Invaliding Medical Board (IMB) held on 30.05.1991 has assessed his disability @ 30% for two years neither attributable to nor aggravated by military service (NANA). Disability pension claim of applicant was rejected vide order dated 20.02.1992 and communicated to applicant vide letter dated 29.02.1992. Thereafter, first appeal preferred against rejection of disability pension claim was rejected vide order dated 15.06.1993 on the ground of disability being NANA and existence of the same w.e.f. the year 1985 i.e. prior to applicant's enrolment. It is in this perspective that this O.A. has been filed.

3. Learned counsel for the applicant pleaded that applicant was enrolled in the army in medically and physically fit condition. It was further pleaded that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time of entry. In the event of his subsequently being invalided out from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. He pleaded that applicant was under stress of service conditions which may have led to occurrence of the disability. He pleaded for disability pension to be granted to applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant, while serving with 29 Air Defence Regiment, was admitted in Military Hospital, Baroda on 02.01.1990 and was further transferred to Military Hospital, Ahmedabad on 12.01.1990 for treatment. Later he was discharged from Military Hospital on 23.01.1990 with diagnosis 'MUMPS'. After discharge from hospital, he was granted 64 days annual leave and while on leave he was admitted in 161 Military Hospital on 13.04.1991. He was further transferred to Military Hospital, Bareilly on 19.04.1991 for treatment. On 23.05.1991, Graded Specialist (Psychiatry & Medicine) of Military Hospital, Bareilly recommended applicant to be invalided out from service in medical category '**EEE (Psychological)**' for his diagnosis '**SCHIZOPHRENIA (295)**'. The medical board has

recommended applicant's percentage of disability @ 30% for two years neither attributable to nor aggravated by military service. Learned counsel for the respondents further contended that since the medical board has recommended the disability to be NANA, the pension sanctioning authority i.e. PCDA (P) Allahabad has rightly rejected disability pension claim on the grounds of disability being neither attributable to nor aggravated by military service. He pleaded the O.A. to be dismissed.

5. We have heard learned counsel for both sides and perused the material placed on record.

6. On careful perusal of the medical documents, it has emerged that applicant was enrolled on 14.04.1987 and during the course of service he was admitted in Military Hospital, Baroda on 02.01.1990. Applicant was further transferred to Military Hospital, Ahmedabad. During course of annual leave he was again admitted to Military Hospital, Bareilly where the Graded Specialist (Psychiatry) had diagnosed applicant to be suffering from '**SCHIZOPHRENIA (295)**' and recommended him to be invalided out of service in medical category '**EEE (Psychological)**'. For convenience sake, opinion of Graded Specialist (Psychiatry) is quoted as under:-

"This 26 yrs old soldier with four years of service is a case of Schizophrenia (295). This is his second psychotic breakdown, the first being in 1985. He is unlikely to be good soldier and hence considered unfit for further service. Recommended to be invalided out of service in low medical category 'EEE (Psychological)."

7. The aforesaid opinion of Psychiatric Specialist shows that applicant was suffering from aforesaid ailment w.e.f. 1985 i.e. prior to enrolment, and the said disability was not developed during military service, therefore, it is not connected with military service. In view of this, there appears to be strong weightage in the stand of the respondents that applicant's disability '**SCHIZOPHRENIA (295)**' is not connected to military service as opined by the IMB. Further, the Appellate Committee on First Appeals (ACFA) has also examined applicant's disability in the light of relevant rules and finally rejected the case being neither attributable to nor aggravated by military service. We are in agreement with the opinion of IMB proceedings and First Appellate Committee. In view of the foregoing, and the fact that the disease of applicant was existing prior to enrolment, 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.

8. 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.

9. Additionally, in Civil Appeal No 7672 of 2019, **Ex Cfn Narsingh Yadav vs Union of India & Ors**, it has again been held by the Hon'ble Supreme Court that mental disorders cannot be detected at the time of recruitment and their subsequent manifestation (in this case after about six months of recruit service) does not entitle a person for disability pension unless there are very valid reasons and strong medical evidence to dispute the opinion of Medical Board. Relevant part of the aforesaid judgment is as given below:-

“20. In the present case, clause 14 (d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that ‘Paranoid Schizophrenia (F 20.0)’ is presumed to be attributed to or aggravated by military service.

21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board. The Invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the Invaliding Medical Board.”

10. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to cost.

12. Misc applications, pending if any, stand disposed off.

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

Dated: 04 August, 2021

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