

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 3 of 2021**Wednesday, this the 11th day of August, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)LAC Amardeep Singh 903915
Accounts Assistant
S/o Shri D.P. Singh
R/o H. No. 133/J, Shiv Katra Road,
Harjinder Nagar, Kanpur (UP)**.... Applicant**Ld. Counsel for the Applicant: **Shri Satendra Kumar Singh,**
Advocate.
Versus

1. Union of India, through Chief of Air Staff, Vayu Bhawan, New Delhi.
2. Central Command Head Quarter, I.A. Vayu Sena Nagar, Nagpur.
3. Air Head Quarters, Directorate of Air Veterans, Subroto Park, New Delhi – 110010.
4. Air Officer Commanding 402 Air Force Station, Chakeri, Kanpur.
5. Chief Account Officer, Pension Office of the P.C.D.A. (P) Draupadi Ghat, Prayagraj-211014.

... RespondentsLd. Counsel for the Respondents: **Ms. Appoli Srivastava,**
Central Govt Counsel.**ORDER**

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) Hon’ble Tribunal may kindly please to quash/set aside order dated 09.10.2019 issued by opposite party i.e. Wg Cdr Air headquarter director of Air Veterans New Delhi and order dated 30.09.2019 medical board proceeding passed by opposite party i.e. medical board 32 wing air force as contained in Annexure No. 1 and 9 with the O.A. application.
- (ii) To issue order or direction to the authorities concern for release of disability pension in favour of the applicant which has been arises during service as observed by medical board on dated 30.09.2019 for the disability 40% for life in favour of the applicant.
- (iii) To issue order or direction to the authorities concern to provide disability pension in favour of the applicant since discharge from service @ 18% interest inspite of medical board consideration for 40% disability in favour of the applicant for life even though in several judgment Apex Court observation provide in catena of judgment in favour of the army personal who has been disabled during service which has not been observed by the opposite party till yet.
- (iv) Any such other order or direction which this Hon’ble Tribunal may deem fit and proper may also be passed in favour of the applicant on the basis of circumstances of the case.
- (v) Allow the petition with cost in favour of the applicant.”

2. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Air Force on 28.09.2004 and was discharged from service on 30.09.2019 on fulfilling the conditions of his enrolment after rendering 15 years and 03 days of service. The applicant was initially placed in low medical category A4G4(T-24) for ID “**Bipolar Affective Disorder**” vide AFMSF-15 dated 20.09.2014. Subsequently, he was reviewed

and placed in low medical category A4G3 (P) vide AFMSF-15 dated 08.03.2017. The Release Medical Board assessed his disability ID "Bipolar Affective Disorder" @ 40% for life and considered it neither attributable to nor aggravated by service. The disability pension claim of the applicant was rejected vide order dated 19.09.2019 which was communicated to the applicant vide letter dated 09.10.2019. The applicant preferred first Appeal which was also rejected vide order dated 18.12.2020. It is in this perspective that applicant has filed this O.A.

3. Learned Counsel for the applicant submitted that applicant was enrolled in the Indian Air Force in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to joining, therefore any disability suffered by applicant after joining the service should be considered as attributable to or aggravated by military service and he should be entitled to disability pension @ 40% for life as per pronouncements of the Hon'ble Apex Court in ***Union of India vs. Rajveer Singh*** (CA No. 2904 of 2011, decided on 13.02.2015), ***Union of India & ors vs. Manjit Singh*** (CA No. 4357-58 of 2015) (arising out of SLP No. 13732-33 of 2015), decided on 12.05.2015, ***Union of India vs. Angad Singh*** (CA No. 2208 of 2011, decided on 24.02.2015), ***KJS Butter vs. Union of India***, CA No. 5591 of 2006 decided on 31.03.2011, ***Ex Hav Mani Ram Bhabaria vs. Union of India and others***, Civil Appeal No. 4409 of 2011, decided on 11.02.2016, ***Satwinder Singh vs. Union of***

India, OA No. 1235 of 2014, **Hoshiar Singh vs. UOI & Ors**, O.A. No. 480 of 2015 **Jasbir Singh vs. UOI & Ors**, Civil Appeal No. 1695 of 2016 (arising out of SLP (c) No. 22765 of 2011, decided on 11.02.2016.

4. On the other hand, learned counsel for the respondents submitted that applicant was having family history of Psychiatric illness as his father was known case of BPAD on treatment from service Psychiatric since past 20 years and his mother also took treatment for reactive depression in the past vide Summary & Opinion of Graded Specialist in Psychiatry of MH Jodhpur dated 24.04.2015, filed alongwith counter affidavit as Annexure CA-1. He further submitted that assessment of the disability is @ 40% for life but it is considered as neither attributable to nor aggravated by service, therefore, condition for grant of disability pension does not fulfil in terms of Rule 153 of Pension Regulations for the Air Force, 1961 (Part-1). The primary condition for the grant of disability pension are *'Unless otherwise specifically provided a disability pension may be granted to an individual who is invalidated from service on account of disability which is attributable to or aggravated by Air Force Service and is assessed at 20% or over'*. He further submitted that AFT (PB), New Delhi in its order dated 13.03.2020 has dismissed OA No. 1193 of 2017, **Ex. Sgt J. Singh vs. Union of India & Ors**, on merits in favour of Union of India for disability ID 'Bipolar Affective Disorder'. Therefore, the competent authority has rightly denied the benefit

of disability pension to the applicant. Learned counsel for the respondents pleaded for dismissal of O.A.

5. We have given our considerable thoughts to both sides and have carefully perused the records. The only question that needs to be answered is, whether the disability of the applicant is attributable to or aggravated by military service?

6. We have noted that the applicant suffered with disability which is assessed @ 40% for life but it is considered as neither attributable to nor aggravated by service (NANA). The disability "Bipolar Affective Disorder" to which applicant was suffering is a kind of Psychiatric disease and applicant has a family history of Psychiatric illness as his parents are also suffering from same kind of psychiatric disease and are under treatment in military hospital. The disease of the applicant had first started in June 2014, i.e. after rendering 9 years of service. The RMB considered the disease of the applicant as NANA on the grounds that the disease is a psychiatric ailment due to several endogenous and exogenous factors having no causal relation with military service and the onset of disability is in peace station. Perusal of medical records i.e. opinion of Classified Specialist (Psychiatry) also reveals that the applicant has family history of same kind of disease.

7. It is pertinent to mention that judgments relied upon by the applicant in Para 3 referred above are not relevant in the present case being based on different facts and circumstances of the case

as the cases relied upon by learned counsel for the applicant were not the cases in which applicants were having family history of mental disorder in any of the case relied upon, whereas in the present case, applicant's parents, both father and mother are suffering from psychiatric disease, a kind of mental disorder and are under treatment in military hospitals which is mentioned by Psychiatric Specialist in Medical Board also.

8. It is well known fact that mental disorders can escape detection at the time of enrolment hence, benefit of doubt cannot be given to the applicant merely on the ground that the disease could not be detected at the time of enrolment. 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 13 days 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.”

9. In the instant case, the applicant has family history of the psychiatric disease and the applicant also suffered from the disability just after serving 9 years while posted in peace station with no visible stress and strain of service, it can safely be concluded that the disability is of genetic nature and has no causal connection the service and, therefore, the Release Medical Board has rightly considered the disability as NANA.

10. In light of the AFT (PB) judgment in **Ex. Sgt J. Singh** (supra), Rule 153 of Pension Regulations for the Air Force, 1961 (Part-1) and opinion of Classified Specialist (Psychiatry), applicant is not entitled to disability pension.

11. The Original Application is devoid of merit, deserves to be dismissed and same is accordingly **dismissed**.

12. No order as to costs.

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

Dated: 11th August, 2021

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