

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 471 of 2020**Thursday, this the 26th day of August, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 15804265P Ex Rect, Rupendra Prasad
S/o Sh. Dwarika Prasad
R/o 64/250C, Hastinapuri Ral Firoz Khan, C.O.D. Road,
Agra, U.P. – 282001.... **Applicant**Ld. Counsel for the Applicant : **Col A.K. Srivastava (Retd),**
Shri Dharam Raj Singh &
Dr. Ashish Asthana Advocate

Versus

1. Union of India through Secretary, Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of the Army Staff, IHQ MOD (Army), Army HQ, South Block, New Delhi.
3. The Officer-in-Charge, Sena Vayu Raksha Abhilekh, Army Air Defence Records, PIN – 908803, C/o 99 APO.
4. Principal Controller of Defence Accounts, (Pension), Draupadi Ghat, Allahabad.

... **Respondents**Ld. Counsel for the Respondents : **Ms. Anju Singh,**
Central Govt Counsel.**ORDER**

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

- A. *To issue/pass an order or direction to set-aside/quash the order no. AAD/15804265P/DP/Pen dated 10.11.2016 passed by respondent no.-3.*
- B. *To issue/pass an order or direction to the respondents to grant the disability pension @ 20% for life from date of discharge i.e. 30.11.2015 alongwith 12% interest on arrear in light of Hon'ble Apex Court judgment.*
- C. *To issue/pass an order or direction to the respondents to grant the benefit of rounding off disability pension @ 20 to @ 50% for life from date of discharge i.e. 30.11.2015 alongwith 12% interest on arrear in light of letter dated 31.01.2001 and Hon'ble Apex Court judgment.*
- D. *To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- E. *To allow this original application with costs."*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 23.03.2015 and was invalided out of service w.e.f. 30.11.2015 in low medical category 'EEE' under Army Rule 13(3) III (iv). The Invaliding Medical Board (IMB) assessed his disability "IDIOPATHIC GENERALISED SEIZURES @ 30% for life as neither attributable to nor aggravated by military service (NANA). Disability pension claim of applicant was rejected vide order dated 10.11.2016. Thereafter, the applicant submitted a petition dated 15.05.2017 which was suitably replied by the respondents vide letter dated 18.07.2017. Thereafter, the applicant submitted an application dated 09.11.2019 under RTI Act 2005 requesting copy of all medical board proceedings and copy letter of rejection of disability claim which were forwarded to the applicant by the respondents vide letter dated 16.01.2020. Thereafter, the applicant preferred first appeal which was replied vide

letter dated 07.04.2020. Being aggrieved, applicant has filed this Original Application.

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 person 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 injury. In this regard, he relied on the decision of the Hon'ble Supreme Court in the case of ***Dharamvir Singh v. Union of India and others***, case No. 4949 of 2013, decided on 02.07.2013, ***Sukhvinder Singh vs. Union of India*** in Civil Appeal No. 5605 of 2010, decided on 25.06.2014 and ***Union of India vs. Ram Avtar***, Regulation 423 (c) of Regulations for Medical Services for Armed Forces 1983 and Government of India, MoD letter dated 31.01.2001 and pleaded for the disability to be considered attributable to or aggravated by military service. He also prayed for disability pension to be granted @ 20% to be rounded off to 50% for life.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant while undergoing basic military training on 15.07.2015 suddenly lost his consciousness after falling from bed with injury to nose and left great toe. This was associated with tightening of limbs

with postictal confusion. He was initially evacuated to Military Hospital, Gopalpur from where he was transferred to Command Hospital, Kolkata on 23.07.2015 for further evaluation. The applicant was carefully examined by the Classified Specialist (Med) & Neurologist from 23.07.2015 to 29.08.2015 and opined that the applicant is not fit to be retain in military service/training in view of his seizure disorder and was recommended to be placed in medical category P5 with disability "IDIOPATHIC GENERALISED SEIZURES". Accordingly, he was invalided out of service on 30.11.2015.

5. Learned counsel for the respondents further contended that since the medical board has recommended the disability to be NANA, therefore, under the provisions of Rule 173 of Pension Regulations for the Army, 1961 (Part-1), the pension sanctioning authority has rightly rejected disability pension claim on the grounds of disability being neither attributable to nor aggravated by military service (NANA). She pleaded the O.A. to be dismissed.

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

7. On careful perusal of the records and medical documents, it has emerged that applicant was enrolled on 23.03.2015 and during basic military training on 08.07.1995, he was admitted in Military Hospital and after detailed investigation/treatment, he was found suffering from Seizure Disorder. The applicant, as a recruit, had disability during training and was invalided out of service being low medical category

EEE as recommended by IMB. Further, the Appellate Committee on First Appeals (ACFA) has also examined applicant's disability in the light of relevant rules and finally rejected being neither attributable to nor aggravated by military service. We are in agreement with the opinion of IMB proceedings and First Appellate Committee.

8. As per Invaliding Medical Board disability is not the result of applicant's fault or negligence. It existed prior to applicant's entry in service but could not be detected which in our considered view seems to be true. Had it not existed from before it could not be occur merely being fallen from bed. The Board has clearly opined that it was not due to stress of military training. This suggests that it existed prior to enrolment and later aggravated after being fallen from bed wherein military training had no role to play.

9. Additionally, a recruit is akin to a probationer and hence, prima facie the respondents as an employer have a right to discharge a recruit who is not meeting the medical requirement of military service. In view of the foregoing, and the fact that the disability existed before joining service, 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.

10. 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.

11. 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 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.”

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

13. No order as to costs.

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

Dated: 26th August, 2021
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