

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

ORIGINAL APPLICATION No. 508 of 2020

Monday, this the 2nd day of August, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Ex. 801876 NC (E) Mohan Singh, S/o Jeet Singh R/o Village –
Kothiyan, P.O. Pilkholi, Tehsil Ranikhet, District – Almora,
Uttarakhand-263645.

..... Applicant

Ld. Counsel for the : **Shri Kishore Rai**, Advocate.
Applicant

Versus

1. Union of India, Ministry of Defence through its Secretary,
South Block, New Delhi-110011.
2. P.C.D.A. (P), Allahabad, Uttar Pradesh.
3. Senior Record Officer, Air Force Record Office, Subroto
Park, New Delhi-110010.
4. The Chief of Air Staff, Air Force Headquarters, New Delhi.

.....**Respondents**

Ld. Counsel for the : **Shri Rajesh Sharma**,
Respondents. 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. A direction to quash the order dated 08.04.1987 passed by respondent No. 3 (contained as Annexure No. 3 to this original application) or to
- ii. A direction to grant the disability pension to the applicant conceded the disability attributable to or aggravated by military service from 21.02.1986 along with rounding off to the tune of 50%.
- iii. To summon the entire records of the applicant pertaining to computation of his disability pension.
- iv. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Air Force on 19.03.1984 and was invalided out from service on 21.02.1986 in Low Medical Category under Chapter III Rule 15 clause 2(c) of the Air Force Rules, 1969 after rendering 01 year, 11 months and 01 day of service. At the time of invaliding from service, the Invaliding Medical Board (IMB) assessed his disability '**SCHIZOPHRENIA (296)**' @40% for two years and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 13.03.1987 which was communicated to the applicant vide

letter dated 08.04.1987. The applicant preferred representations dated 25.05.2010 and 12.10.2018 which too were rejected by the respondents vide letters dated 28.04.2010 and 09.01.2019. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Indian Air Force in medically and physically fit condition. It was further pleaded that an individual 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 the applicant was under stress and strains due to rigors of service conditions which may have led to occurrence of the disability. The Ld. Counsel for the applicant, on account of aforesaid, pleaded for disability pension to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that since the IMB has opined the disability as NANA, the applicant is not entitled to disability pension. He

further accentuated that the applicant is not entitled to disability pension in terms of Rule 153 of Pension Regulations for the Indian Air Force, 1961 (Part-I), which stipulates that, "unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by air force service and is assessed at 20% or over", but in the instant case the disability of the applicant has been assessed at 40% for two years and NANA, therefore, the applicant is not entitled to disability pension. The Ld. Counsel for the respondents further submitted that claim for disability pension has rightly been rejected by the competent authority in view of para 153 of Pension Regulations for the Indian Air Force, 1961 (Part-I), which categorically states that the minimum period of qualifying service actually rendered and required for grant of invalid pension is ten years, but in the instant case the applicant has put in only 01 year, 11 months and 01 day of service. He relied upon the orders passed by the Armed Forces Tribunal, Principal Bench, New Delhi in the cases of Ex. AC Vinod Kumar Versus Union of India & Others (O.A. No. 1255 of 2017, decided on 11.03.2020), Ex. AC (U/T) V.P.

Singh Versus Union of India & Others (O.A. No. 1722 of 2017, decided on 05.03.2020) and Ex. LAC Pankaj Rawat Versus Union of India & Others (O.A. No. 929 of 2018, decided on 06.03.2020) for the disability ID SCHIZOPHRENIA. He pleaded that in the facts and circumstances, as stated above, Original Application deserves to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. On careful perusal of the medical documents, it has been observed that the applicant was enrolled in the Indian Air Force on 19.03.1984, and the applicant was invalided out from service on 20.02.1986, i.e. within two years of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than two years of his enrolment, hence by no stretch of imagination, it can be concluded that it has been caused by stress and strains of Air Force service. Additionally, it is well known 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. Since there is no causal connection between the disease and Air Force service, we are in agreement with the opinion of the IMB that the disease is NANA. In view of the foregoing and the fact that the disease manifested in less than two years of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.

8. Apart from, in similar factual background this Tribunal had dismissed the claim for disability pension in T.A. No. 1462/2010 vide order dated 23.05.2011, wherein the 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. The said order has been upheld by the Hon'ble Apex Court in Civil Appeal arising out of Dy. No. 30684/2017, *Bhartendu Kumar Dwivedi Versus Union of India and Others*, decided on November 20, 2017, by dismissing Civil Appeal on delay as well as on merits.

9. Additionally, in Civil Appeal No 7672 of 2019 in ***Ex Cfn Narsingh Yadav vs Union of India & Ors***, decided on 03.10.2019, 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 three years of 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 as given in para 20 is as 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 which may warrant the constitution of the Review 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 Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to costs.

12. Pending applications, if any, are disposed of accordingly.

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

Dated : 02 August, 2021

AKD/-