

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 480 of 2019**

Wednesday, this the 16<sup>th</sup> day of December 2020

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

No. 7116234-K Cfn Yaduvir Singh (Invalided), S/O Shri (Late) Ajitan Singh,  
 R/O of Village : Korth, PO : Shiv Nagar, Tehsil : Bah, Dist : Agra (UP) –  
 283114.

..... Applicant

Ld. Counsel for the: **Shri Shailendra Kumar Singh**, Advocate  
 Applicant

Versus

1. Union of India through Secretary, Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block-III, New Delhi – 110011.
3. Addl Dte Gen of Pers Ser (PS-4)/IMP-II, Adjutant General' Branch, IHQ of MoD (Army), DHQ PO, New Delhi -110011.
4. OIC Records, EME Records, PIN: 900453, C/O 56 APO.
5. O/o The PCDA (Pension), Draupadi Ghat, Allahabd (UP)-211014.

..... Respondents

Ld. Counsel for the  
 Respondents

**:Shri Ashish Kumar Singh**  
 Central Govt Counsel.

**ORDER**

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

“(a) To quash or set aside the Respondent No. 3 letter dated 22 Dec 2017 (REJECTION OF FIRST APPEAL).

(b) To direct the respondents to grant DISABILITY PENSION to the applicant from the date of APPEAL MEDICAL BOARD i.e, 09 May 2017.

(c) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.

2. Briefly stated facts of the case are that applicant was enrolled in the Corps of EME of Indian army on 21.01.1969 and was invalided out from service on 08.06.1972 in low medical category under Rule 13 (3) Item III (iii) of the Army Rules, 1954. At the time of invaliding from service, the Invaliding Medical Board (IMB) held at Military Hospital, Ranikhet on 02.02.1972 assessed his disability ‘EPILEPSY GRANDMAL TYPE (345)’ @ 10-15% (permanent) and opined it to be neither attributable to nor aggravated (NANA) by military service. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 27.10.1972. The applicant preferred First Appeal and Second Appeal which too were rejected vide letters dated 22.12.2017 and 14.08.2018 respectively. 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 Army 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. He further stressed that the Medical Board has assessed percentage of disability @ 10-15%, therefore, the disability should be accepted as aggravated by military service in terms of judgment in the case of ***Sukhwinder Singh vs Union of India & Ors***, Civil Appeal No 5605 of 2010 decided on 25.06.2014. Learned counsel for the applicant pleaded for disability pension to be granted to the applicant.

4. On the other hand, learned counsel for the respondents submitted that since the IMB has opined the disability as NANA, applicant is not entitled to disability pension. He further accentuated that the applicant is not entitled to disability pension in terms of Rule 173 of Pensions Regulations for the Army, 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 military service and is assessed at 20% or above, but in the instant case the disability of applicant has been assessed @ 10-15% (permanent) and NANA, therefore, applicant is not entitled to disability pension. Learned counsel for the respondents further submitted that claim for disability pension has rightly been rejected by the competent authority in view of para 198 of Pension Regulations for the Army, 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 03 years and 04 months of service. He pleaded that in the facts and circumstances of the case, as stated above, Original Application deserves 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 been observed that applicant was enrolled on 21.01.1969 and he was found to be suffering with the aforesaid disease during October 1971, i.e. within 03 years and 04

months of joining the service. He was administered treatment at Military Hospital, Ranikhet. On admission in the Hospital the case history of the applicant was endorsed by Lt Col KB Roy, AMC, Medical Specialist as under:-

*“This 22 years old crafts man with about 3 years of service gives the history of attacks of “FITS” from childhood. After enrolment in service also, he had attacks of fits at an interval of 4-5 months. Since Oct this year he had five such attacks. One attack of fit has also been observed in the hospital. In the description of fits, he does not have any aura. There is tonic spasm of the body followed by clonic convulsion lasting for about 2-3 minutes. He looks dazed after an episode but there is no post seizure automatism or coma.*

*He has no neurological deficit including X-Ray skull and fandoscopy are within normal limits. Considering the history of fits since childhood and the description of fits which have been observed, I am of the opinion that he is probably a case of epilepsy of the grand mal type.*

*He is unlikely to prove to be an effective soldier.*

*Recommended medical category EEE.”*

7. In the above scenario, we are of the view that since, as per endorsement made in medical case sheet as well as in IMB, applicant was suffering from aforesaid disease from childhood and the disease manifested later, therefore, by no stretch of imagination, it can be concluded that it has been caused by stress and strains of military 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 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 military service, we are in agreement with the opinion of the IMB

that the disease is neither attributable to nor aggravated by military service. In view of the foregoing and the fact that the disease was existing from his childhood and manifested during later years of military service, we are in agreement with the opinion of IMB that the disease is neither attributable to nor aggravated by military service.

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 20.11.2017, 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.

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

Dated : 16<sup>th</sup> December, 2020

RSP