

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 495 of 2018**Friday, this the 11<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)”**

Ex. Recruit Durgesh Kumar Singh (Army No. 15511513-K) of Basic Training Regiment, Armoured Corps, C/o 56 APO, Son of Shri Ram Murat Singh, resident of Village and Post Office naugvantir, Tehsil Sultanpur Sadar, P.S. – Kudwar, District – Sultanpur (U.P.). Pincode-228155.

..... Applicant

Ld. Counsel for the : **Shri K.K. Singh Bisht**, Advocate.  
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, Armoured Corps Records, PIN-900476, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)-211014.

.....**Respondents**

Ld. Counsel for the : **Shri Sunil 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.

- (a) Issue/Pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal Armoured Corps Records letter No. 15511513K/DP/Pen dated 20.06.2014 Z{Annexure No. A-1(ii)} rejecting the disability pension claim to him.
- (b) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal rejection of First Appeal by the Appellate Committee on First Appeal by the Appellate Committee on First Appeals (ACFA) vide their letter No. B/40502/302/2015/AG/PS-4(Imp-II) dated 21.03.2016 {Annexure No. A-1(iii)} rejecting the disability pension claim.
- (c) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal rejection of Second Appeal by the Second Appellate Committee on Pension (SACP) vide their letter No. B/38046A/217/2016/AG/PS-4 (2nd Appeal) dated 23.03.2017 {Annexure No. A-1 (iv)}

rejecting the disability pension claim of the applicant.

- (d) Issue/pass an order or direction to the respondents to quash/set-aside the arbitrary and illegal order dated 24.04.2017 passed by OIC Records {Annexure No. A-1(v)} rejecting the disability pension claim of the applicant.
- (e) Issue/pass an order or direction of appropriate nature to the respondents to grant 50% disability pension to the applicant for life with effect from the date of his discharge i.e. 16.12.2013 along with arrears of disability pension with interest at the rate of 18% per annum.
- (f) Issue/pas any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (g) Allow this application with cost.

2. Briefly stated facts of the case are that applicant was enrolled in the Corps of Singnals of Indian Army on 17.06.2013 and was invalided out from service on 16.12.2013 in Low Medical Category under Rule 13 (3) Item IV of the Army Rules, 1954. At the time of invaliding from service, the Invaliding Medical Board (IMB) held at Command Hospital (Southern Command), Pune on 21.11.2013 assessed his disability 'CATATONIC SCHIZOPHRENIA' @40% for life and opined the disability

to be neither attributable to nor aggravated (NANA) by service. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 20.06.2014. The applicant preferred First Appeal and Second Appeal which too were rejected vide letters dated 21.03.2016 and 23.03.2017 respectively. The applicant preferred Original Application No. 303 of 2015 before this Tribunal which was disposed vide order dated 04.10.2016. In compliance of order dated 04.10.2016 passed by this Tribunal in O.A. No. 303 of 2015, the respondents have disposed of applicant's representation vide their order dated 25.04.2017. 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 also mentioned onset/origin of the disease during service/training, therefore, the disability should be accepted as attributable to military service. 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 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 over, but in the instant case the disability of the applicant has been assessed at 40% for life 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 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 07 months of service. 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 on 17.06.2013, and the disease applicant was found to be suffering with in medical test first started on 13.09.2013, i.e. within three months of joining the service. He was administered treatment at Military Hospital, Ahmedabad. On admission in the Hospital the case history of the applicant was endorsed by Lt Col A. Saha, Classified Specialist (Psychiatry), Command Hospital (Southern Command), Pune as under:-

*“This 19 year old Recruit of Armd with 3 months of training in the background of failing in one of the sub-test of PPT, presented with acute onset fearfulness anxious preoccupation, self-absorbed behaviour, anxiety, diminished interaction social withdrawal, diminished psycho motor activity, poor self-care, weight loss posturing and disorganized behaviour of one month duration. On evaluation, he was noted to be confused looking, having*

*catatonic features like mutism, severe psychomotor retardation, negativism, posturing, and ambitendency,. He had a perplexed affect, paucity of thought content, poor insight, impaired judgment and deranged biodrives.*

*He has no genetic loading or pas history of psychiatric illness or substance abuse. His routine investigations revealed no features of organicity. He was managed as Catatonic schizophrenia with short course of BZDs, ECT (05) & Anti-psychotics. He has responded gradually with some residual psychotic symptoms.*

*In view of above, chronic & relapsing nature of his illness, psychotic breakdown at an early phase of training & service, slow response to treatment need for long term medication, he is unlikely to be a useful soldier in future.*

*Hence, as per provision of existing policy for recruits, in accordance with DGMS AO 03/2011 & Para 9 of DG Memorandum 171/2002, he is recommended to be placed in LMC S5 and to be invalided out from service in same category.*

xxxxxxx”

7. In the above scenario, we are of the opinion that since the disease has started in less than three months of his enrolment, hence 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 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 military service, we are in agreement with the opinion of the IMB that the disease is NANA. Additionally, a recruit is akin to a probationer and hence, prima facie the respondents as an employer have every right to discharge a recruit who is not meeting the medical requirement of military service

and is not likely to become a good soldier. In view of the foregoing and the fact that the disease manifested in less than three months of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.

8. Apart from, in similar factual background a Regional Bench of Armed Forces 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)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 11 December, 2020

AKD/-