

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 74 of 2019**Monday, this the 15<sup>th</sup> day of February, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 4188116-K Ex-Rect Bhuwan Chandra  
S/o Shri Devi Datt  
R/o Vill – 63 RA Line, Top Khana Bazar  
PO – Dilkusha, Distt – Lucknow Cantt, Pin – 263623**.... Applicant**Ld. Counsel for the Applicant : **Shri Parijaat Belaura**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi.
3. Officer-in-charge, The Kumaon Regiment, PIN-900473, C/o 56 APO.
4. The Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad (UP).

**... Respondents**Ld. Counsel for the Respondents : **Shri D.K. Pandey**,  
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:-

- “(I) To grant disability pension @ 20% and round off the same from 20% to 50% as per GOI, MoD letter 31.01.2001, w.e.f. 01.11.2001.

- (II) To pay arrear of disability pension along with 12% interest from the date of his invalidment i.e. 08.07.1995 till it is actually paid.
- (III) Any other suitable relief this Hon'ble Court deems fit and proper may also be granted."

2. Brief facts of the case are that the applicant was enrolled in the Indian army on 23.02.1995 and was invalided out of service w.e.f. 08.07.1995 in low medical category under Army Rule 13(3) III (iv) due to disability "**TRICUSPID REGURGITATION**", assessed @ 6-10% for life and considered it neither attributable to nor aggravated by military service (NANA). The applicant submitted a representation dated 02.01.2018 but the same has not been replied by the respondents. Being aggrieved, applicant has filed this Original Application.

3. Learned counsel for the applicant submitted 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. In this regard, he submitted that for grant of disability pension the law is settled by the Hon'ble Apex Court in the case of **Dharambir Singh vs Union of India & Ors** and **Sukhvinder Singh vs. Union of India & Ors** and pleaded for disability to be considered as attributable to or aggravated by military service. He also prayed for disability pension to be granted @ 20% to be rounded off to 50%.

4. On the other hand, Ld. Counsel for the respondents submitted that disability of applicant has been considered as neither attributable to nor aggravated by military service by the medical board, hence in view of Rule 173 of Pension Regulation for the Army, 1961 (Part-1), he is not entitled for disability pension. He further submitted that IMB has opined that applicant contracted the disease prior to joining the service. The Invaliding Medical Board has recommended applicant's disability below 20% as neither attributable to nor aggravated by military service and also not connected with service, hence, he is not entitled for disability pension.

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

6. On careful perusal of the records and medical documents, it has emerged that applicant was enrolled on 23.02.1995 and the disease had first started on 10.03.1995 within 15 days during training period. After a detailed investigations by the classified specialist Psychiatrist, applicant was not found fit to continue training in service and was recommended by the Invaliding Medical Board to be invalided out of service in medical category 'EEE'.

7. The applicant was invalided out of service being low medical category EEE as recommended by IMB. Further, the competent authority while adjudicating the disability pension claim of the applicant 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. 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. 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.

8. 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.

9. 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 15 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:-

