

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 764 of 2022**

Tuesday, this the 07<sup>th</sup> day of February, 2023

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**  
**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 4496718L, Ex. Rect. Sandeep Singh, S/o Kulwant Singh, R/o Village and Post – Khajuri, District – Mainpuri, Pin – 231001, U.P.

..... **Applicant**

Ld. Counsel for the Applicant : **Shri Dharam Raj Singh**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101 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. Additional Directorate General of Personnel Service/AG’s Branch. IHQ of Ministry of Defence (Army), PIN -900256, C/o 56 APO.
4. Officer –in Charge Records, The SIKH Lt, PIN-9000927, C/o 56 APO.
5. PCDA (Pension), Draupadi Ghat, Allahabad.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Alok Kumar Mishra**, Advocate  
 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. *To issue/pass an order or direction to set-aside /quash the order /letter No. B/40502 /853/2020 /AG/PS-4(Imp-II) dated 13.01.2021 issued /passed by respondent No.4 and order /letter No. B/38046A/250/2021/AG/PS-4(2<sup>nd</sup> Appeal) Dated 29 November 2021 passed by respondent No.4 which are being annexed as Annexure No.A-1 and A-2 to this Original Application.*
- (B) *To issue /pass an order or direction to the respondents for grant of disability pension @40% for life w.e.f. 21.07.2018 i.e. date of invalidation along with 12% interest on arrear in light of Hon'ble Apex Court judgments.*
- (C) *To issue/pass an order or directions to the respondents grant benefit of rounding off disability pension in tune of 50% for life w.e.f 21.07.2018 i.e. date of invalidment along with 12% interest on arrear in light of Hon'ble Apex Court judgment as stated above.*
- (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. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 20.03.2018 and invalided out from service on 21.07.2018 (A/N) in Low Medical Category under Rule 13 (3) III (IV) of the Army Rules, 1954. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Command Hospital (Central Command), Lucknow on 28.06.2018 assessed his disability **'ADJUSTMENT DISORDER WITH DSH BY**

**INGESTING NAPHTHALENE BALL'** @40% for life 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 24.09.2018. The applicant preferred First Appeal which too was rejected vide letter dated 13.01.2021 which was communicated to the applicant vide letter dated 28.01.2021. The applicant preferred Second Appeal which too was rejected vide letter dated 29.11.2021 which was communicated to the applicant vide letter dated 10.12.2021. 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. 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 Invaliding Medical Board (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 Regulation 81 of Pension Regulations for the Army, 2008 (Part-I), which stipulates *that, "Unless otherwise specifically provided a disability pension consisting of service element and disability element 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 in non-battle casualty and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."* Accordingly, the applicant was informed about the rejection/non-entitlement of disability element. 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 documents, it has been observed that the applicant was enrolled on 20.03.2018,

and the disease applicant was found to be suffering with in medical test first started on 12.04.2018, i.e. within 24 days of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than one month 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. In view of the foregoing and the fact that the disease manifested in less than one month of enrolment, we are in agreement with the opinion of Invaliding Medical Board (IMB) that the disease is NANA.

8. Apart from above, in similar factual background Armed Forces Tribunal, Regional Bench, Lucknow 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 and 21 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 Atul Kumar Jain)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 07 February, 2023

AKD/ Ashok/-