

Court No. 1

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

Original Application No. 23 of 2018

Thursday, this the 7th day of January, 2021

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

No. 17001770X Cfn Gopal Chandra Mishra, son of Sri Ram Shankar Mishra, Resident of village-Kaitha, P.O.-Jalalpur, Tehsil-Jalalpur, District-Ambedkar Nagar (U.P.).

.... Applicant

Ld. Counsel for the: **Shri Manish Mani Sharma**, Advocate.
Applicant

Versus

1. The Union of India, Through its Secretary, Govt of India, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, Army Headquarters, New Delhi.
3. Commanding Officer, 3 Tech Trg Bn, 1 EME Centre, C/O 56 APO.
4. Officer In-charge Records, 3 Trg Bn, Sikandarabad.
5. General Officer in Commanding in Chief, Headquarters Northern Command, C/O 56 APO.
6. Secretary Zila Sainik Board, Ambedkar Nagar (U.P.).

... Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal**,
Respondents 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) *Quash/set aside the impugned order dated 05.06.2011 as wholly illegal and passed without application of mind by directing the respondent to grant disability pension from his discharge from Military service alongwith arrears, in the interest of justice.*
- (II) *Pass such other and further orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

2. Brief facts of the case are that the applicant was enrolled in the Indian army on 30.06.2009 and was invalided out of service w.e.f. 04.10.2010 in low medical category '(S5)' due to 'SCHIZOPHRENIA F-20.0'. The Invaliding Medical Board (IMB) has assessed his disability @ 40% for life neither attributable to nor aggravated by military service (NANA). Disability pension claim of applicant was rejected and communicated to applicant vide letter dated 28.04.2011 with the advice to prefer First Appeal within six months but the same has not been preferred.

3. Learned counsel for the applicant pleaded that applicant was enrolled in the army in medically and physically fit condition. It was further pleaded that a member 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 applicant was under stress of service conditions which may have led to occurrence of the disability. He pleaded for disability pension to be granted to applicant.

4. On the other hand, learned counsel for the respondents submitted that since the Invaliding Medical Board (IMB) has recommended applicant's percentage of disability @ 40% for life neither attributable to nor aggravated by military service (NANA), therefore, the pension sanctioning authority has rejected disability pension claim on the grounds of disability being neither attributable to nor aggravated by military service. He pleaded the O.A. to be dismissed.

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

6. On careful perusal of material placed on record, it has emerged that applicant was enrolled on 30.06.2009 and during basic military training he was downgraded to low medical category on 17.09.2010 (para 4.2 of O.A. refers) i.e. within three months of recruitment on account of mental illness and subsequently invalided out of service with effect from 04.10.2011. This presumably shows that the applicant was suffering from mental illness prior to enrolment and mental illness manifested within a short span of time.

7. Further, the applicant, as a recruit, developed symptoms of this disease for the first time within three months of enrolment. Three to four months period as a recruit appears to be too short a period to link this disability with stress and strain of service. Therefore, there appears to be strong weightage in the stand of the respondents that applicant's disability 'SCHIZOPHRENIA F-20.0' is not connected to military service as opined by the IMB. Further, the competent authority has also examined applicant's disability in the light of relevant rules and finally rejected disability pension claim being neither attributable to nor aggravated by military service. We are in agreement with the opinion of IMB proceedings and competent authority who has rejected disability pension claim. 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. In view of the foregoing, and the fact that the disease manifested within about three months of enrolment, 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 within about three months 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:-

“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. 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 O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to cost.

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

Dated: 07th January, 2021

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