

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 404 of 2017**Thursday, this the 14th day of January, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 13992034 Ex-Rect Ram Bhawan
S/o Late Rajpati
R/o 100/4, Kashi Ram Colony, Phase-II,
Hans Khera, Para, Lucknow**.... Applicant**Ld. Counsel for the Applicant : **Col A.K. Srivastava (Retd)**, Advocate.

Versus

1. Union of India through the secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Additional Director General of personnel Services/AG's Branch IHQ of MoD (Army) C/o 56 APO Pin 900256.
3. Officer-In-Charge Records, Army Medical Corps, Pin-900450, Lucknow-226002.
4. The PCDA(P), Draupadi Ghat, Allahabad.

... RespondentsLd. Counsel for the Respondents : **Shri Kaushik Chatterji**,
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:-

- A. *To issue/pass an order to set-aside/quash the rejection of disability pension order dated 21.05.1997.*

- B. *To issue/pass an order or directions to the respondents to Grant of Disability Pension from the date of discharge i.e. 20.02.1996.*
- C. *To issue/pass an order or directions to rounding off the disability pension of the applicant @ 40% to 50% alongwith 9% interest of the arrear from the date of discharge.*
- 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. Brief facts of the case are that the applicant was enrolled in the Indian army on 26.06.1995 and was invalided out of service w.e.f. 20.02.1996 in low medical category under Army Rule 13(3) III (iv) due to disabilities (i) "**Acute Organic Brain Syndrome**" @ 30% for two years and (ii) "**Head Injury Effects Of**" @ 30% for two years, composite disability was assessed @ 40% for two years and both disabilities of the applicant were considered as neither attributable to nor aggravated by military service (NANA). Disability pension claim of applicant was rejected vide order dated 21.05.1997. Thereafter, applicant preferred an appeal dated 16.07.1997 but appeal has not been decided by the respondents till filing of Original Application. Later applicant filed an application dated 16.11.2016 under RTI asking disposal of his appeal, then respondents replied through letter dated 31.12.2016 that "*info not available with this office*". Being aggrieved, applicant has filed this Original Application.

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 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. He pleaded that applicant was under stress of service conditions which may have led to occurrence of the injury. In this regard, he relied on the decision of the Hon'ble Supreme Court in the case of ***Dharamvir Singh v. Union of India and others (2013) 7 SCC 316***, ***Sukhvinder Singh vs. Union of India*** in Civil Appeal No. 5605 of 2010 and ***Union of India vs. Ram Avtar*** and Government of India, MoD letter dated 31.01.2001 and pleaded for the disabilities to be considered attributable to or aggravated by military service. He also prayed for disability pension to be granted @ 40% to be rounded off to 50%.

4. On the other hand, Ld. Counsel for the respondents submitted that applicant, while undergoing basic military training, sustained head injury on 08.07.1995 near Arjunganj railway track and was admitted in KGMC, Lucknow by civil police and from there he was brought to Command Hospital, Lucknow for treatment. After treatment he was sent on 4 weeks sick leave w.e.f. 24.07.1995. During his leave period, applicant started behaving abnormally and was admitted in hospital. Applicant was under psychiatric observation at Command Hospital, Lucknow w.e.f. 10.08.1995 and was also examined by Neuro Surgeon. The IMB held on 15.01.1996 and applicant was recommended to be invalided out of service in medical category EEE

(Permanent). Accordingly, he was invalided out of service. He further submitted that injury sustained is not connected with the performance of duty as per Injury Report dated 28.11.1995. The medical board had recommended applicant's percentage of disability @ 40% for life as neither attributable to nor aggravated by military service, hence, he is not entitled for disability pension.

5. Learned counsel for the respondents further contended that since the medical board has recommended the disability to be NANA, therefore, under the provisions of Rule 173 of Pension Regulations for the Army 1961 (Part-1), the pension sanctioning authority has rejected disability pension claim on the grounds of disability being neither attributable to nor aggravated by military service (NANA). He pleaded the O.A. to be dismissed.

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

7. On careful perusal of the records and medical documents, it has emerged that applicant was enrolled on 26.06.1995 and during basic military training on 08.07.1995 i.e. only after 13 days, he was found injured near Arjunganj railway track, out of unit area, with intention to commit suicide as per opinion of Court of Inquiry. The opinion of the Court is reproduced below :-

“The grievous injury (multiple facial and skull fracture) sustained by No. 13992034 Rect/SKT Ram Bhawan were consequent to being hit on the head by some part of a moving train, when he left the unit lines on the morning of 08 Jul 95 with intention to commit suicide.”

8. The applicant, as a recruit, had head injury within a very short span of time during training and was invalided out of service being low medical category EEE as recommended by IMB. Further, the Appellate Committee on First Appeals (ACFA) 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 and First Appellate Committee. 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 injury sustained being a fault of applicant himself, 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.

9. 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.

10. 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 13 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:-

“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.”

11. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

12. No order as to costs.

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

Dated: January, 2021

SB