

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 644 of 2017**Wednesday, this the 27th day of January, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex Rect Ram Pratap Singh
 S/o Late Rajan Singh
 R/o House No. H3/224 Amrapali Yojna, Avas-Vikash Colony
 Dubagga Lucknow, Pin-226101.
 Village – Pahi, Post –Ugtur,
 Tehsil – Sandila PS – Beniganj,
 Dist – Hardoi (UP) PIN-226101

..... ApplicantLd. Counsel for the Applicant : **Shri Yashpal Singh**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, Integrated headquarter of Ministry of Defence (Army), South Block, New Delhi-110011.
3. General Officer Commanding-in-Chief Central Command, C/o 56 APO.
4. Director General Communication, IHQ of MoD (Army), New Delhi-110011.
5. Officer-in-Charge records, Signal Records, Jabalpur.
6. Appellate Committee of First Appeal through Under Secretary, Government of India, Ministry of Defence, New Delhi.
7. Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad (now Prayagraj).

..... RespondentsLd. Counsel for the Respondents : **Shri Ashish Kumar Singh**,
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) Issue/pass an order or direction of appropriate nature to the respondents to grant disability pension wef 25-11-1988 to which he is entitled to minimum 50% disability pension as per Pension Regulations for the Army 1961 after rounding off the same in terms of Govt. of India letter No 1(2)/97/I/D (Pen-C) dated 31.01.2001 (Annexure No. A-5).
- (a-i) Issue/pass an order or direction setting aside the recommendations of the Release Medical Board dated 21.10.1988 insofar as the same hold the disability of the applicant neither attributable to nor aggravated by the Army service (Annexure No. 3A to the original Application); and orders/letters dated 31.05.1990 and 01.07.1991 passed/issued by the Principal Controller of Defence Accounts (Pension), Allahabad and Appellate Committee on First Appeals, respectively rejecting the claim of the applicant for disability pension (Annexure No. 3B and 3C to the original Application), after summoning the relevant original records.
- (b) Issue/pass an order or direction to the respondents to finalize the Second Appeal dated 09-07-2016 (Annexure No A-2).
- (c) Issue/pass an order or direction of appropriate nature to the respondents to pay appropriate compensation because of the recurring loss of the entitled pension to the applicant because of non-adherence of the relevant provisions on the subject.
- (d) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(e) Allow this application with cost.”

2. Brief facts of the case are that the applicant was enrolled in the Indian army on 21.03.1987 and was invalided out of service w.e.f. 23.11.1988 (AN) in low medical category under Army Rule 13(3) III (iv) due to disability “**GENERALISED EPOLEPSY OF ADULT (345)**”. The medical board assessed disability of the applicant @ 15-19% for two years and considered it neither attributable to nor aggravated by military service (NANA). Disability pension claim of applicant was rejected by PCDA (P) Allahabad vide order dated 31.05.1990 stating that disability “*is not attributable to military service and does not fulfil the following conditions, namely it existed before and has remained aggravate thereby*”. First appeal of the applicant dated 25.10.1990 was rejected by Appellate Committee vide order dated 01.07.1991. Thereafter, applicant preferred second appeal dated 09.07.2016 which was not considered by the competent authority due to policy constraint and the same was intimated to the applicant vide letter dated 08.08.2016. 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 action of the respondents is violative of Para 173 of Pension Regulations for the Army, Entitlement Rules for Pensionary Casualty Awardes, 1982 and the Hon'ble Apex Court judgment in ***Dharamveer Singh vs. Union of India*** (2013) (3) SCT 778). He further submitted that for grant of disability pension the law is settled by the Hon'ble Apex Court as well as this Hon'ble Tribunal in various cases and pleaded for disability to be considered as attributable to or aggravated by military service. He also prayed for disability pension to be granted duly rounded off to 50%.

4. On the other hand, Ld. Counsel for the respondents submitted that disability of applicant has been considered below 20% as neither attributable to nor aggravated by military service by the medical board and the disability is constitutional in nature, which debarred him for grant of disability pension, hence in view of Rule 173 of Pension Regulation for the Army, 1961 (Part-1), 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 21.03.1987 and in the month of April 1988, applicant was admitted in MH Jabalpur following an attack of Generalised Seizures and during investigations/treatment, it was found that applicant was asymptomatic and has recurrence of symptoms. After a detailed investigations by the classified specialist, 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 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 costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: January, 2021

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