

**Court No. 1**

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

**ORIGINAL APPLICATION No. 222 of 2018**

Tuesday, this the 12<sup>th</sup> day of January, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt Bala Devi, W/o Late No. 1242825 Gnr Krishan Pal Singh Verma, R/o Vill- Raghunath Pur, PO- Siwal, Distt – Meerut, (U.P.).

..... Applicant

Ld. Counsel for the: **Shri KK Mishra, Advocate.**  
Applicant

Versus

1. The Union of India, through its Secretary, Ministry of Defence (Army), New Delhi.
2. The Chief of Army Staff, Army Headquarters, New Delhi.
3. Officer-in-Charge Records Artillery, Nasik Road Camp.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri R.C. Shukla,**  
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.

- (i) To direct the respondents to grant disability pension of her husband to the applicant as per her entitlement from the date of his discharge from the service, i.e. 05 Sep 1971.*
- (ii) To direct the respondents to pay the arrears of disability pension with interest as applicable.*
- (iii) Any other relief which the Hon’ble Tribunal may consider appropriate may be granted in favour of the applicant.*
- (iv) Cost of the application be awarded to the applicant.*

2. Briefly stated facts of the case are that applicant’s husband was enrolled in the Indian Army on 13.07.1967 and was invalided out from service on 05.09.1971 in Low Medical Category under Rule 13 (3) Item III (iii) of the Army Rules, 1954, after having rendered about four years of service. At the time of invaliding out from service, the Invaliding Medical Board (IMB) assessed applicant husband’s disability ‘**GRAND MAL EPILEPSY (IDIOPATHIC)-345’** @ 20% for two years and

considered as neither attributable to nor aggravated (NANA) by military service. The claim of applicant's husband for disability pension was initiated but the same was rejected by the Principal Controller of Defence Accounts (Pension), Allahabad vide their letter dated 03.01.1972. The applicant preferred First Appeal which too was rejected vide letter dated 18.11.1972. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that the husband of 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. He pleaded that the applicant was under stress and strains due to rigors of service conditions which may have led to occurrence of the disability. The Ld. Counsel for the applicant, on account of aforesaid, pleaded for disability pension to be granted to the applicant's husband.

4. On the other hand, Ld. Counsel for the respondents submitted that claim of applicant's husband for disability pension was rejected by the Principal Controller of Defence Accounts (Pension), Allahabad as the disability of the applicant's husband was neither attributable to nor aggravated (NANA) by military service as the disability had no causal connection with service factor, the applicant is not entitled to disability pension. He further accentuated that the applicant is not entitled to disability pension in terms of Rule 173 of Pensions Regulations for the Army, 1961 (Part-I), which stipulates that, "unless otherwise specifically provided, a disability pension 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 and is assessed at 20% or over, but in the instant case the disability of the applicant's husband has been assessed as NANA by duly constituted Invaliding Medical Board , therefore, the husband of the applicant is not entitled to disability pension. He pleaded that in the facts and circumstances of the case, 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's husband was enrolled on 13.07.1967, and he was invalided out from service with effect from 05.09.1971, i.e. after about four years. The husband of the applicant died on 10.09.1980. The appeal for grant of the disability pension claim was rejected by the competent authority in the year 1972. Since 1972 to 2018, neither the applicant's husband in his life time, nor the applicant has approached any court/ Tribunal for such a prolonged period for grant of disability pension claim. Now, in absence of Invaliding Medical Board, facts cannot be ascertained. Though the husband of the applicant was found fit at the time of enrolment, yet certain diseases in its quiescent stage cannot be detected during primary medical examination which is carried out by Recruiting Medical Officer at the time of enrolment unless an individual himself discloses of such disease to the Medical Officer or exhibits any sign. The medical examination at the time of enrolment does not involve extensive medical examination like laboratory tests and clinical medical examination and other clinical analysis tests etc, due to lack of infrastructure and laboratory facilities, at the recruiting site of enrolment. Hence the disease like

**'GRAND MAL EPILPSY 345'** in its quiescent stage could not be detected at the time of Recruitment Medical Examination which is used to be carried out by a single medical officer, unless an individual exhibits signification to this effect.

7. In the above scenario, we are of the opinion that since the disease has started in April 1971 at Jhansi in peace station, in less than four years 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 respondents that the disease is NANA. The respondents as an employer have every right to discharge a soldier who is not meeting the medical requirement of military service and is not likely to become a good soldier. In view of the foregoing and the fact that the disease manifested in about four years of

enrolment, we are in agreement with the opinion of respondents that the disease is NANA.

8. Apart from, in similar factual background this Tribunal 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 four 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 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."*

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 Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 11 January, 2021

ukt/-