

**Court No. 1**

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

**ORIGINAL APPLICATION No. 557 of 2019**

Monday, this the 11<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)”**

No. 3166949X Ex. Sep. Virendra Kumar, S/o Sri Biri Singh,  
Resident of Vill. & Post Bhenyan, Tehsil – Iglas, District – Aligarh,  
U.P. Pin Code – 202124, Uttar Pradesh.

..... Applicant

Ld. Counsel for the: **Shri Om Prakash Kushwaha**, Advocate.  
Applicant

Versus

1. The Union of India, through the Secretary, Ministry of Defence (Army), New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), Sena Bhawan, New Delhi.
3. Officer-in-Charge Records, The JAT Regiment, PIN-900496, C/o 56 APO.
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.

- (A) *To issue/pass an order or direction to set-aside/quash the letter no. G3/80/1240/IX/433 dated 20.03.1984, letter No. 3166949/DP/JR dated 02.04.1986, letter No. 7(1447)81/D(Pen-A) dated 26.10.1983 and 20.11.1985 (all of the copies not provided to the applicant) mentioned under order dated 31.03.1994, order number 2373/ESM/Depot/OPV/114 and order dated 23.08.2019.*
- (B) *To issue/pass an order or directions to the respondents to grant disability pension @40% alongwith 12% interest on the arrears from date of invalidation i.e. 23.11.1979 to the applicant in light of Hon’ble Apex Court judgment and Govt. of India letter dated 31.01.2001.*
- (C) *To issue/pass an order or directions to the respondents to grant benefit of rounding off disability pension @40% to @50% alongwith 12% interest on the arrears from date of invalidation i.e. 23.11.1979 to the applicant in light of Hon’ble Apex court judgment (Union of India & ors Vs Ram Avtar).*
- (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 28.05.1976 and was invalided out from service on 23.11.1979 in Low Medical Category under Rule 13 (3) Item III (iii) of the Army Rules, 1954 after having rendered three years, five months and 25 days of service. At the time of invaliding from service, the Invaliding Medical Board (IMB) assessed his disability '**SCHIZOPHRENIA**' @40%. The applicant's claim for disability pension was initiated but the same was rejected by the Principal Controller of Defence Accounts (Pension), Allahabad vide their letter dated 20.03.1980. The applicant preferred First Appeal and Second Appeal which too were rejected vide letters dated 26.10.1983 and 20.11.1985 respectively. The applicant again preferred petition dated 16.08.2019. In reply, the applicant has been communicated that all connected documents in respect of applicant have already been destroyed after expiry of retention period, and as per record held with Records in Long Roll his claim for disability pension has been rejected by the Principal Controller of Defence Accounts (Pension), Allahabad. 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. 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.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant's claim for disability pension was rejected by the Principal Controller of Defence Accounts (Pension), Allahabad as the disability of the applicant was neither attributable to nor aggravated (NANA) by military service, 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 has been assessed at 40% and NANA, therefore, the applicant is not entitled to disability pension. He further submitted that documents in respect of applicant have been destroyed by a Board of Officers on expiry of its mandatory retention period of 25 years being a non pensioner in terms of Para 595 of Regulation for the army, 1987. Only Long Roll is available with the respondents. The Ld. Counsel for the respondents further submitted that claim for disability pension has rightly been rejected by the competent authority in view of para 198 of Pension Regulations for the Army, 1961 (Part-I), which categorically states that the minimum period of qualifying service actually rendered and required for grant of invalid pension is ten years, but in the instant case the applicant has put in only 07 months of service. 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 medical documents, it has been observed that the applicant was enrolled on 28.05.1976, and he was invalided out from service with effect from 23.11.1979, i.e. within three and half years.

7. In the above scenario, we are of the opinion that since the disease has started 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 less than 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 three and half 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

AKD/-