

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 06 of 2020**Monday, this the 25th day of January, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 8952433T Ex AC (U/T) Manish Kumar, son of Shri Udayveer Singh, Resident of Village of Naglra Chhatti, Post Bisawar, Tehsil Sadabad, District – Hathras-281302.

..... Applicant

Ld. Counsel for the: **Shri Manoj Kumar Awasthi**, Advocate.
Applicant

Versus

1. The Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Air Staff, Air Headquarters (Vayu Bhawan), Rafi Marg, New Delhi-110011.
3. Principal Director of Air Veteran, Subroto Park, New Delhi-110010.
4. Joint Controller of Defence Accounts (P), Subroto Park, New Delhi-110010.
5. The Chairman, Appellate Committee on Second Appeal, Dte. of Air Veterans (Av-III) Appeals Air HQ, AFRO Building, Subroto Park, New Delhi-110010.

.....**Respondents**Ld. Counsel for the
Respondents.: **Shri Shyam Singh**,
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 directions to set aside/quash the Impugned order dated 04.06.2014, 11.06.2015 and 11.09.2019 as Annexure A-1, 2 and 3.*
- B. *To issue/pass an order or directions to the respondents to grant Disability Pension @40% with effect from 10.05.2014.*
- C. *To issue/pass an order or directions to the respondents to grant Disability Pension @40% to 50% for life to teh4 applicant and pay due arrears including consequential benefits with interest @12% till final payment is made.*
- D. *To issue/pass an order or directions to the respondents to grant Ex-serviceman status to teh applicant and make eligible for ECHS card and Medical & CDS facilities as like other ex-serviceman.*
- E. *Any other relief which the Hon’ble Tribunal may deem fit and proper in the fact and circumstances of the case.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Air Force on 03.04.2013 and was invalided out from service on 10.05.2014 in Low Medical Category under clause “On having been found medically unfit for further service in Indian Air Force”, after having rendered one year, one month and six days of service. At the time of invaliding from service, the Invaliding Medical Board (IMB) held at Military Hospital, Chennai on

15.02.2014 assessed his disability '**MANIC EPISODE F-30**' @40% for life. The applicant's claim for disability pension was rejected vide order dated 04.06.2014. The applicant preferred First Appeal and Second Appeal which too were rejected vide letters dated 11.06.2015 and 11.09.2019 respectively. 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 Indian Air Force 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. Ld. Counsel for the applicant has relied upon the law laid down by the Hon'ble Apex Court in the cases of **Union of India Versus Manjeet Singh**, Civil Appeal No. 4357-4358 of 2015, decided on 12.05.2015, **Union of India & Another Versus Rajbir Singh**, Civil Appeal No. 2904 of 2011, decided on 13.02.2015 and Order dated 24.11.2017 passed by Armed Forces Tribunal, Regional Bench, Chennai in the case of **Ex. Gnr. K. Vilvalingam, Versus Union of India and Others**, O.A. No. 21 of 2016 and Order dated 27.07.2017 passed

by the Armed Forces Tribunal, Regional Bench, Jabalpur in Diary No. 1008 of 2015 with M.A. No. 1 of 2016 and O.A. No. 45 (J)/2017 ***Rohit Kumar Jha Versus Union of India and Others***. The Ld. Counsel for the applicant, on account of aforesaid, pleaded for disability pension as well as other benefits 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 as the disability of the applicant was neither attributable to nor aggravated (NANA) by Air Force 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 153 of Pensions Regulations for the Air Force, 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 Air Force 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 applicant was not able to pass the End Term Exam of the 1st Term. His oral intake was reduced and even the sleep was disturbed. He was admitted as a case of Psychiatric (Inv) Depression. 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 03.04.2013, and his disability first time was detected in November 2013 i.e. just within eight months of recruitment, hence by no stretch of imagination, it can be concluded that it has been caused by stress and strains of air Force 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 Air Force 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 Air Force 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 eight of enrolment, we are in agreement with the opinion of respondents that the disease is NANA.

7. 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 Air Force 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.

8. 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.”

9. The case laws applicant has relied upon are different.

(a) In case of **Manjeet Singh** (supra), applicant fell unconscious in the course of cross country practice, hence not similar.

(b) In case of **Rajbir Singh** (supra), medical board had not given specific reason for NANA, hence not similar.

(c) In case of **Vivalingam** (supra), Medical Board had not given specific reason that 'Onset of disease was in temporal relation to stress of military training and posting to a field unit. There is not generic load for the illness' hence not similar.

(d) In case of **Rohit Kumar Jha** (supra), applicant had completed his training and had completed two years of service, hence not similar.

10. In view of the above, we are of the view that the period when the applicant joined service and the date when he was discharged is too short and even the applicant had not completed in training. In such circumstances the disability cannot be said to be either attributable to or aggravated by Air Force Service. More over applicant was not serving in a war like situation or in cases of extreme environment conditions of service or when he is denied leave or subjected to physical abuse in a peace area when he is

not in a field or counter insurgency area. Medical Board is of the opinion that he is unlikely to be able to serve as a fit and productive soldier. His behaviour during observation by doctors was abnormal and he was noted to be agitated, hyperactive and over talkative. He refused to follow instructions of paramedical staff, expressed expensive ideas and started giving unsolicited suggestions. Medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore it may not detect some dormant disease. Besides, certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions, hence his disability cannot be considered as aggravated and attributable to Air Force service. 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 : 25th January, 2021

AKD/-