

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

**ORIGINAL APPLICATION No. 392 of 2022**

Friday, this the 06<sup>th</sup> day of January, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Ex. Recruit Md. Shoharab (Army No. 15435768-N), S/o of Md. Slahuddin, Resident of Village – Dharawan, Post Office – Gangauli, Tehsil – Muhammadabad, District – Ghazipur (U.P.), Pin Code – 233222.

..... **Applicant**

Ld. Counsel for the : **Wg. Cdr S.N. Dwivedi (Retd.)**, Advocate  
 Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi -110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, Army Medical Corps and Commandant AMC Centre and College, Lucknow Cantt – 226002.
4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....**Respondents**

Ld. Counsel for the : **Dr. Shailendra Sharma Atal** , Advocate  
 Respondents. 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) *Issue/Pass an order to set aside the impugned order letter dated 28.08.2012 (initial Rejection of disability Pension) and letter dated 06.12.2021 (Annexure A-1) by which the First Appeal against non grant of disability element to the applicant has been rejected.*
- (b) *Issue/pass an order to quash or modify Para 4 of policy letter dated 16.07.2020 (Annexure No.A-7), being contradictory and discriminatory in nature and violative of principles of natural justice.*
- (c) *Issue /pass any order or direction to the respondents to grant disability element to the applicant at minimum of 40%, the disability pension to be rounded off to 50% as per policy issued vide GOI, Ministry of Defence letter No. 17(01)/2017/D (pen/Policy) dated 23.01.2018 and the same circulated vide PCDA (P) Allahabad Circular No. 596 dated 09.02.2018 and specific direction of the apex court passed in various cases to this effect.*
- (d) *Issue/pass an order or direction to the respondents to release the disability pension w.e.f. 23-12-2011, that is the next date of release of the applicant from the Army.*
- (e) *Issue/pass any other order or direction that this Hon’ble Tribunal may deem fit, and proper under the circumstances of the case.*

2. Briefly stated facts of the case are that applicant was enrolled in the Army Medical Corps of Indian Army on 25.06.2011 and was invalided out from service on 22.12.2011 (F/N) in Low Medical Category under Rule 13 (3) Item (iv) of the Army Rules, 1954 after rendering 05 months and 26 days of service. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Command Hospital (Central Command), Lucknow on 01.12.2011 assessed his disability '**MODERATE DEPRESSIVE EPISODE**' @40% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 10.04.2013. The applicant preferred First Appeal which too was rejected vide letter dated 04.12.2021. 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. 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 since the Invaliding Medical Board has opined the disability as NANA, the applicant is not entitled to disability pension. He further accentuated that the applicant is not entitled to disability pension in terms of Regulation 173 of Pension Regulations for the Army, 1961 (Part-I), which stipulates *that, "Unless otherwise specifically provided a disability pension consisting of service element and disability element 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 in non-battle casualty and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."* Accordingly, the applicant was informed about the rejection/non-entitlement of disability element. Ld. Counsel for the respondents further submitted that earlier the applicant

had filed Original Application No. 67 of 2015 before this Tribunal which was dismissed vide order dated 08.09.2021. In the said order this Tribunal has observed that *“after discharge from service applicant was despatched along with escort to hand him over to his parents which implies that his mental condition was not so good that he could travel on his own.”* 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 documents, it has been observed that the applicant was enrolled on 25.06.2011, and the disease applicant was found to be suffering with in medical test first started on September 2011, i.e. within six months of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than six months 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 the RMB that the disease is NANA. In view of the foregoing and the fact that the disease manifested in less than six months of enrolment, we are in agreement with the opinion of Invaliding Medical Board that the disease is NANA. Further, in the order dated 08.09.2022 in Original Application No. 67 of 2015, which was filed by the applicant, this Tribunal has observed that "*there is treatment of manic episodes but the symptoms can be managed by regular treatment. Thus, we are clear that since the aforesaid disease is incurable, therefore, the Graded Specialist (Psychiatry) has recommended applicant to be invalided in medical category S5*".

8. Apart from above, in similar factual background Armed Forces Tribunal, Regional Bench, Lucknow 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 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.*

*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 which may warrant the constitution of the Review 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 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 Atul Kumar Jain)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 06 January, 2023

AKD/ Ashok/-