

**Court No. 1**

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

**TRANSFERRED APPLICATION No. 3 of 2022**

Friday, this the 6<sup>th</sup> day of January, 2023

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

Ex. Sep. Mahkar Singh (29736111), Village – Pali Anand Garh,  
PO Raghunath Pur, District – Bulandshahr, U.P.

..... **Applicant**

Ld. Counsel for the : **Shri Ramakant Gupta**, Advocate  
Applicant

Versus

1. Union of India through The Secretary, Ministry of Defence,  
DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of  
Ministry of Defence (Army), DHQ PO, New Delhi-110011.
3. The OIC, Rajput Regiments Abhilekh Karyalaya Recods,  
The Rajput Regiment, Pin-900427, C/o 56 APO.
4. PCDA (P), Draupadi Ghat, Allahabad, UP-211014.

.....**Respondents**

Ld. Counsel for the : **Shri Ashish Kumar Singh**, Advocate  
Respondents. Central Govt. Counsel

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant application has been filed under Section 14 of the  
Armed Forces Tribunal Act, 2007, before the Armed Forces  
Tribunal, Regional Bench, Jaipur (Rajasthan), which has been

transferred to this Tribunal and has been renumbered as Transferred Application No. 3 of 2022, for the following reliefs:-

- (a) *To make the applicant's disease i.e. Grandmal Epilepsy "Attributable to Service" in his service records.*
- (b) *To grant the disability pension @20%, rounded off to 50%.*
- (c) *To grant arrears of disability pension since 16.06.1981 till this date along with interest at 12% per annum for the arrears and;*
- (d) *To grant any other order as deemed fit by this Hon'ble Tribunal.*

2. Briefly stated facts of the case are that applicant was enrolled in The Rajput Regiment of Indian Army on 12.03.1977 and was invalided out from service on 15.06.1981 (AN) in Low Medical Category under Rule 13 (3) Item III (iii) of the Army Rules, 1954. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Military Hospital, Bikaner on 26.05.1981 assessed his disability '**GRANDMAL EPILEPSY (345)**' @20% for two years 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 14.10.1981 which was communicated to the applicant vide letter dated

29.10.1981. The applicant preferred Original Application No. 915 of 2018 before Armed Forces Tribunal, Principal Bench, New Delhi which was dismissed as withdrawn vide order dated 09.05.2018 with liberty to file before the appropriate forum. It is in this perspective that the applicant has preferred the present Transferred 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 IMB 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. He pleaded that in the facts and circumstances, as stated above, Transferred 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 12.03.1977, and the disease applicant was found to be suffering with in medical test first started in April, 1981, i.e. within four years and two month of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than four years and two 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 four years and two months of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.

8. Apart from above, 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 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 Transferred 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/-