

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 201 of 2023

Wednesday, this the 29th day of November, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

No. 15440562A Ex Rect Santosh Kumar Bhawanpur, Sahatwar,
District – Ballia Pin – 277211.

..... **Applicant**

Ld. Counsel for the Applicant : **Shri Ravi Kumar Yadav**, Advocate
Holding brief of
Col. H.M. Maheshwari (Vetran), Advocate

Versus

1. Union of India, Through Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), New Delhi.
3. Additional Directorate Personnel Service’s/AG’s Branch, (PS-4 (Imp-II), IHQ of Ministry of Defence (Army), New Delhi.
4. Army Medical Corps Records Office, PIN 900450 C/o 56 APO.
5. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Prayagraj -211014 (U.P).

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Ashish Kumar Singh**, Advocate
Central Govt. Standing Counsel
Assisted by Maj. Danish Farooqui,
Departmental Representative

ORDER

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, 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 declare the action of respondents as unjust, arbitrary and illegal.*
- (b) *To quash and set aside the letter No.B/38046A/80/2016/AG/PS-4(2nd Appeal) dated 15 Sep 2016 and to direct the respondents to allow the disability pension from the time applicant was Invalided out from service i.e. 29 Mar 2013 with an interest @ 10% per annum with all consequential benefits.*
- (c) *To direct the respondents to grant the benefit of rounding off both the disabilities from 40% to 50% and pay arrears with an interest @10% per annum from the date of release i.e. 29 Mar 2013.*
- (d) *Any other relief which this Hon’ble tribunal may deem fit and proper in the facts and circumstances of the case.*
- (e) *Award costs.*

2. Briefly stated facts of the case are that applicant was enrolled in the Army Medical Corps of Indian Army on 20.09.2012 and was invalided out from service on

29.03.2013 (AN) in Low Medical Category. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Lucknow on 25.02.2013 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 which was communicated to the applicant vide letter dated 30.08.2013. The applicant preferred First Appeal which too was rejected vide letter dated 28.07.2015. The applicant preferred Second Appeal which too was rejected vide letter dated 15.09.2016. The applicant preferred Writ - A. No. 58042 of 2016 before the Hon'ble High Court of Judicature at Allahabad which was transferred to this Tribunal and was registered as T.A. No.48 of 2022. The aforesaid T.A. was disposed off being infructuous with liberty to file afresh if applicant so desires vide this Tribunal's order dated 15.12.2022. 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 Invalided 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 81 (a) of Pension Regulations for the Army, 2008 (Part-I) read with Para 54 of Chapter VI of Guide to Medical Officers (Military Pensions), 2008 the applicant is not entitled for disability pension. 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 20.09.2012, and the disease applicant was found to be suffering with in medical test first started on 19.12.2012, i.e. within three months of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than three 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, a recruit is akin to a probationer and hence, prima facie the respondents as an employer have every right to discharge a recruit who is not meeting the medical requirement of military service and is not likely to become a good soldier. Further, 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 three months of enrolment, we are in agreement with

the opinion of Invalided Medical Board that the disease is NANA.

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 and 21 are 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. Ld. Counsel for the applicant orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

13. Pending applications, if any, are disposed of accordingly.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 29 November, 2023

Ashok/AKD/-