

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 114 of 2021**Monday, this the 27<sup>th</sup> day of September, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 2784752 L Ex Rect Chhotu Singh, S/o Sri Latoor Singh, R/o Vill – Chandan Ki Mandia, PO Gulaothi, District Bulandshahar (UP).

..... Applicant

Ld. Counsel for the : **Shri K.K. Misra**, Advocate.  
Applicant

Versus

1. Union of India, through its Secreary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Head Quarters, New Delhi.
3. Officer-in-Charge, Records, The Maratha Light Infantry, Balgaum-590009.
4. PCDA (P), Allahabad.

.....**Respondents**Ld. Counsel for the : **Dr. Chet Narayan Singh**, 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:-

- (i) to quash, Records, The Maratha Light Infantry letter no 2784752/244/PG-3 dt 29 Jan 94 (Annexure A-3 to OA).
- (ii) to direct the respondents to grant 30% disability pension to the applicant, duly rounded off to 50% as per the policy on the subject.
- (iii) to direct the respondents to pay the arrears of disability pension to the applicant with effect from the date of his discharge from service i.e. 07 Oct 1989, with interest.
- (iv) Any other relief which the Hon'ble Tribunal may think just and proper may be granted to the applicant.
- (v) Cost of the case may be awarded in favour of the applicant.

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 23.12.1987 and was invalided out from service on with effect from 07.10.1989 in Low Medical Category under Rule 13 (3) Item III (iii) of the Army Rules, 1954. At the time of invaliding from service, the Invaliding Medical Board (IMB) held at Command Hospital (Southern Command), Pune on 08.09.1989 assessed his disability '**NEUROSIS**' @20% 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 17.07.1990. The applicant preferred representation which too was rejected vide letter dated 29.01.1994. Thereafter, applicant preferred representations dated 14.09.2009 and 11.11.2014 but of no avail. 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 further submitted that while climbing on the hills the applicant slipped and fell down and got injured in his nose as such disability be presumed as attributable to or aggravated by military service. 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 since the IMB has opined the disability as NANA, the applicant is not entitled to disability pension. The applicant reported sick whenever any hard training was planned. He was found unlikely to become symptom free in near future. 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 20% for life and NANA, therefore, the applicant is not entitled to disability pension. 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 01 year, 09 months and 16 days 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 23.12.1987, and the disease applicant was found to be suffering with in medical test first started on 24.02.1989, i.e. within two years of joining the service. Lt. Col. P.S. Valdiya, Associate professor in Psychiatry, AFMS, Pune opined as under:-

*“This 20 years old recruit is a case of NEUROSIS inspite of treatment, he continuous to be symptomatic.*

*His illness was precipitated by injury sustained by him during exercise in Nov 88. Since then this is his third admission to hospital. His main complaint had been pain chest for which he has been investigated thoroughly but no organic cause was found to account for his symptoms by the cardiologist. His pain was vague all over the chest and was to this extent that he was unable to participates in organised training. No organic cause was found to account for his symptoms. He was anxious, worried and mildly depressed. Showed excessive preoccupations his physical complaints. He was given supportive - psychotherapy and drugs but response to therapy had not been satisfactory. Though pain in chest is minimal he fears that it will get aggravated with exertional training programme. His motivation for further service is also lukewarm. Considering the above in my opinion, he is unfit for further military service, as he is unlikely to become symptom free in near future.*

*Recommended medical category ‘EEE’ (Psychological).”*

7. In the above scenario, we are of the opinion that since the disease has started in less than two 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 the IMB that the disease is NANA. 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. In view of the foregoing and the fact that the disease manifested in less than two years 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 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 : 27 September, 2021

AKD/-