

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 123 of 2019

Wednesday, this the 15th day of September, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Mohd. Sarfaraj (Ex. Rect. No. 22050854X), S/o Abdul Sattar, R/o Village – Chandrawali, Post – Saraighasi, Tehsil – Sikandrabad, District Bulandshahar, Uttar Pradesh.

..... Applicant

Ld. Counsel for the Applicant : **Shri Om Pakash**, Advocate.

Versus

1. Union of India, through Chief of the Army Staff, Army Headquarters, Ministry of Defence, New Delhi.
2. Adjutant, No. 2 Mil Trg Bn, AMC Centre and College, PIN-900450, C/o 56 APO.
3. Senior Record Officer, OIC Records, Army Medical Corps Records Office, PIN-900450, C/o 56 APO.

.....**Respondents**

Ld. Counsel for the Respondents. : **Dr. Shailendra Sharma Atal**, Advocate
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 quash the impugned order dated 22.02.2018 passed by respondent no. 2 contained as Annexure no. 1 of the present application, in the interest of justice.
- b) To quash the impugned order dated 10.10.2018 passed by the respondent No. 3 contained as Annexure No. 2 of the present Application, in the interest of justice.
- c) Direct Respondents to consider the case of applicant and restore applicant's service from where he is SOS/SORS from the Corps w.e.f. 01.03.2018 or to allow disability pension of applicant, in the interest of justice.
- d) Costs and expenses of the application in favour of the applicant against all the Opposite Parties.
- e) Any other relief or reliefs which this Hon'ble Tribunal deems fit and proper in the circumstances of the case may also be granted.

2. Briefly stated facts of the case are that applicant was enrolled in the Army Medical Corps of Indian Army on 23.03.2017 and was invalided out from service on with effect from 01.03.2018 in Low Medical Category under Rule 13 (3) Item IV of the Army Rules, 1954. At the time of invaliding from service, the Invaliding Medical Board (IMB) held at Command Hospital (Central Command), Lucknow in January, 2018 assessed his disability '**MANIC**

EPISODE WITH PSYCHOTIC SYMPTOMS' @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,.10.2018. 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 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. 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 40% 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 11 months and 09 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 23.03.2017, and the disease applicant was found to be suffering with in medical test first started on 21.12.2017, i.e. within 10 months of joining the service. Col. T. Madhusudan, Senior Advisor (Psychiatry) and Lt. Col. Vikas Mathur, Classified Specialist (Psychiatry) have opined as under:-

“This 20 yrs old Recruit was enrolled on 23 Mar 2017 and thereafter was given the usual military training, as well as leave of about 30 days, over the past 8 months or so; at the regimental centre in Lucknow.

He was noted to be gradually odd in behaviour and speech since about 10 days before his admission on and sundry with his plans for advancement in life.

He was accordingly put under escort round – the clock and admitted to the Psychiatric Wing of a Command Hospital in Lucknow. Over the next few days, he was noted to be always on the go with a tendency to argue when thwarted. He even tried to verbally and physically abuse his escorts on occasion, which was extremely odd and unwarranted. He boasted of being an officer and talked excessively and in a loud tone of grand plans for the futuresuch as becoming an IAS Officer and destroying the corrupt and dishonest people in the country. He boasted that he never needed any sleep and could work non-stop. He professed superior knowledge about the Armed forces despite being only a recruit.

Mental state examination revealed increased psychomotor activity, elated effect and pressured speech flight of ideas and delusions of grandiose ability. At times he got extremely agitated and violent. No cognitive deficits. He lacks insight and judgment in a clear sensorium. Envery was increased with decreased need for sleep.

The recruit was diagnosed and treated as Manic Episode with Psychotic symptoms, offered warmth and emotional support in a structured, safe environment. He was prescribed medication for psychotic symptoms and for the mood disorder.

He has shown adequate but partial response. ?The recruit will not be able to resume training or withstand the rigors of military service, in view of his demonstrated vulnerability to a severe mental disorder of a psychotic nature.

The recruit is therefore recommended Category S5 for this disability with the following advice to optimize his disability and reduce the risk of harm to him-self and to others.

- *Continue medication as advised under the case of a doctor.*
- *Get admitted to the nearest Mental hospital in case of relapse/exacerbations.*
- *Avoid travelling along and any kind of substance abuse.*

In view of above indl brought before medical board”

7. In the above scenario, we are of the opinion that since the disease has started in less than ten 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 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 ten 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 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 : 15 September, 2021

AKD/-