

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 507 of 2017**Tuesday, this the 07<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. 17008447-L Ex. Sep. Prashant Kumar, S/o shri Jiya Lal, R/o Village : Handia, PO : Mittoopur, Tehsil : Phoolpur, District Azamgarh (UP)-224166.

..... Applicant

Ld. Counsel for the Applicant : **Shri Shailendra Kumar Singh**, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi-110011.
3. Dte Gen of EME (EME Pers), Master Gen of Ord Branch, IHQ of MoD (Army), PIN : 908704, C/o 56 APO.
4. O IC Records, EME Records, PIN : 900453, C/o 56 APO.
5. Comdt, Military Hospital, Allahabad, PIN : 900479, C/o 56 APO.

.....**Respondents**Ld. Counsel for the Respondents. : **Dr. Chet Narayan Singh**, 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 or set aside the impugned Order (EME letter dated 08 Jun 2017 & Impugned Order Annexure A-1 of instant OA refers) being arbitrary and bad in the eye of law.
- (B) To issue order or direction to the Respondents to re-instate the applicant in the service wef 01.02.2012 with all consequential benefits protecting his previous service period (07.04.2010 to 31.01.2012) for all service purpose.
- (C) Any other relief as considered deemed just and proper by the Hon'ble Tribunal in the nature and circumstances of the instant case be awarded in favour of the applicant.
- (D) To impose a suitable costs on respondents as deemed fit and proper by this Hon'ble Tribunal in favour of the applicant.

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 07.04.2010 and was invalided out from service on 31.01.2012 (AN) under Rule 13 (3) Item III (iii) of the Army Rules, 1954. At the time of invalidment the Invaliding Medical Board held at Military Hospital, Jhansi on 09.12.2011 assessed his disability **'MANIA WITHOUT PSYCHOTIC SYMPTOMS P 30.1'** @1-5% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. after his discharge from Indian Army the applicant admitted in

Gandhi Memorial & Associated Hospital (CSM Medical University, Lucknow) on 04.02.2013 and undergone all the investigation there on 28.01.2013. In the Rorschach Test, it reveals that PSYCHOGRAM of the applicant is within normal limit and IQ assessment was also between 90 to 95. The applicant was issued Discharge Ticket for Indoor Patient dated 04.02.2013 signed by Dr. Manu Agarwal, MD (Psychiatry) and the applicant has not been advised any medicine. Thus, the findings/opinion of the medical experts of Invaliding Medical Board are questionable. Therefore, earlier the applicant had filed Original Application No. 69 of 2013 which was allowed vide order dated 05.01.2016 by setting aside the Discharge Order dated 31.01.2012 and remitted back the controversy for placing before the Review Medical Board for fresh medical opinion by Psychiatric Specialist and to take a fresh decision with regard to applicant's future career in the Indian Army. In compliance of order passed by this Tribunal in the said Original Application the applicant was called upon at Military Hospital, Allahabad vide letter dated 28.04.2016 for holding RSMB. The applicant was hospitalized in Military Hospital, Allahabad on 30.05.2016 and was discharged on 11.06.2016 and R.A.M.B. was held

on 05.06.2016. The respondents have taken decision vide letter dated 08.06.2017 whereby his re-instatement in service was denied despite the fact that the Discharge Order dated 31.01.2012 was already set aside by this Tribunal. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant pleaded that applicant's Discharge Order has already been set aside by this Tribunal vide order dated 05.01.2016 passed in O.A. No. 69 of 2013 and earlier the applicant's disability was assessed @1-5% by the IMB dated 09.12.2011 and has now been assessed as 40% in R.A.M.B. dated 05.06.2016 on unfounded grounds. He has drawn attention of this Tribunal towards Indian Disability Evaluation and Assessment Scale in respect of applicant wherein he has been awarded "Zero" marks for self care, interpersonal activities, communication and understanding and work and arbitrarily awarded "Two" marks for duration of illness. This means R.A.M.B. has considered applicant's disability for the period 2 to 5 years i.e. for the period from date of invalidment (01.02.2010) from service till R.A.M.B. (05.06.2016) was conducted. Thus, his submission is that R.A.M.B. evaluation is on unfounded grounds and this

Tribunal order dated 05.01.2016 has not been complied with in its true spirit. His further submission is that as per R.A.M.B. proceedings the applicant is not suffering from any disablement thus denial of his re-instatement in service by the respondents suffers from the vice of arbitrariness. The Ld. Counsel for the applicant, on account of aforesaid, pleaded that relief prayed for to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that in compliance of order dated 05.01.2016 passed by this Tribunal in Original Application No. 69 of 2013 Re-Assessment Medical Board (R.A.M.B.) was conducted at Military Hospital, Allahabad on 05.06.2016 and approved by HQ Madhya Bharat Area (Med) on 01.02.2017. The disability of the applicant has been found by medical authority **"STATIC"** as found by previous Invaliding Medical Board and disability percentage assessed @40% for life with effect from 05.06.2016 as disability has remained static neither attributable to nor aggravated by military service, hence, 'Nil' for assessment referable to Military Service. Ld. Counsel for the respondents 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 in the Indian Army on 07.04.2010 and the disability started on 04.09.2011 i.e. within two years from the date of enrolment. In compliance of order dated 05.01.2013 passed by this Tribunal in O.A. No. 69 of 2013, Lt. Col. R.N. Mani, Graded Specialist (Psychiatry) opined as under:-

"1. **Opinion as to whether the disease is curable:** *Biopolar Disorder is fundamentally a serious recurrent psychiatric illness. Unipolar mania is a subtype of bipolar disorder. Bipolar disorder is a complex brain disorder and vulnerability to recurrences does not dissipate even with long term stability, but may even accumulate with recurrence of episodes, stressor or use of substance of abuse. Relapse risk over a period of 5 years post-recovery of an episode go on to 70%. More than 90% of individual who have a single manic episode go on to have recurrent mood episodes. Thus, current data on the course and recovery from this illness does not suggest that the illness is curable. This individual is currently in remission from symptoms."*

2. **Whether the applicant may be permitted to continue in Army service :** *As per DG Memorandu, 171 (2002) para 9 (vi) cases with less than two years service with psychiatric illness where chronicity is likely (Major Psychiatric illness) as general rule will be invalidated out.*

*as this individual had manifested with a major psychiatric illness where chronicity is likely of onset as a young adult with less than two years of service with poor medical compliance though currently in remission, there is a high risk of relapse. Consider him unfit to be reinstated in service."*

7. We observed that the R.A.M.B. dated 05.06.2016 has shown applicant's medical status as 'Static', based on Indian Disability Evaluation and Assessment Scale report. As such contentions of applicant's Ld. Counsel that applicant is medically fit and eligible for reinstatement in Army is incorrect. We further observed that current data on the said illness and its recovery does not suggest that the said illness is curable. There is a high risk of relapse, even after its recovery over a period of five years. In such circumstances we are of the opinion that the applicant cannot be permitted to reinstate in military service.

8. 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 R.A.M.B. dated 05.06.2016.

9. 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 R.A.M.B.

10. 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.

11. 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.”*

12. With regard to investigation done by the Gandhi Memorial and Associated Hospitals (CSM Medical University, Lucknow) on 28.01.2013 we are of the opinion that the army personnel are required a specific medical standard which the applicant did not fulfil, as such the opinion of any Civil Hospital cannot be prevailed on the opinion of Re-Assessment Medical Board.

13. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

14. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 07 September, 2021

AKD/-