

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 200 of 2016**

Thursday, this the 30<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)**

Smt. Indira Tiwari, W/o Late Ram Murthy Tiwari and Shri Rahul Tiwari  
S/O Late Ram Murthy Tiwari R/O Jungal Store, Post –Harjinder  
Nagar, Kanpur,

..... Applicants

Ld. Counsel for the Applicant: **Shri Ravi KumarYadav**, Advocate

Versus

1. Officer-in-charge, Sena Seva Corps, Abhilekh, ASC Records, Bangalore.
2. Government of India, through Secretary, Ministry of Defence, New Delhi.

..... Respondents

Ld. Counsel for the : **Dr. Chet Narain Singh**,  
Respondents Central Govt Counsel.

**ORDER (ORAL)**

1. Applicant had filed a Civil Suit (Summon No. 164/90 in the Munsif Court, Faizabad (UP) which was dismissed on 18.08.1992, in the absence of Plaintiff, under the provision of Order IX Rules 8 C.P.C. After that a lapse of almost 10 years, he submitted a Legal Notice dated 02.09.2002 through his Counsel and replied by ASC Records (South) vide letter dated 21.01.2003. Thereafter applicant had filed an Original Suit No. 1219/2002 before the Court of Civil Judge (JD) Kanpur Nagar with the prayer to grant disability pension which was disposed of due to being Suit citing jurisdiction vide order dated 23.12.2014. Now the Original Application has been filed on

behalf of applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- (a) This Hon'ble Tribunal may graciously be pleased the quash/set aside discharge order issued vide letter No. 13866789/6/NER/-I dated 20Nov 86 discharging the applicant from service by handing over discharge book, passed by Asst Record Officer, Officer Incharge, contained in Annexure No. 5A.1 of Supplementary affidavit.
- (b) Petitioner's may kindly be granted all consequential reliefs applicable to a serving soldier.
- (c) Any other reliefs which this Hon'ble Tribunal deems fit and proper under the facts and circumstances of the case.
- (d) Cost of petition be provided.

2. Briefly stated facts of the case are that applicant's husband was enrolled in the Indian Army on 21.01.1978 and was invalided out from service on 02.08.1986 in low medical category EEE and has rendered more than 8 years of service. Prior to his Invaliding Medical Board (IMB) was conducted at Military Hospital, Jodhpur which assessed his disability '**SCHIZOPHRENIA 295**' @ 50% for 02 years neither attributable to nor aggravated by military service. Disability pension claim of applicant's husband was rejected by PCDA (P) vide order dated 03.07.1987 being NANA, therefore, disability pension is not admissible to the applicant. Decision of the Pension Sanctioning authority PCDA (P), Allahabad was communicated to applicant by Records (South) vide letter dated 14.08.1987 with an advice that

applicant should prefer an appeal against the decision within six month from 14.08.1987, but applicant failed to do so. Thereafter, applicant submitted a petition dated 19.11.2014 which was also rejected vide order dated 08.03.2015. Now this Original Application has been filed by applicant. Husband of the applicant died on 09.09.2018. Name of Smt Indira Tiwari wife of Ram Murty Tiwari and Rahul Tiwari son of Ram Murthy Tiwari were substituted in O.A and prayer clause was also amended through amendment 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 in low medical category 'EEE', any deterioration in his health is to be presumed due to service conditions. He pleaded that the applicant was under stress and strain due to rigors of service conditions which may have led to occurrence of the disability. He further stressed that the Medical Board has assessed percentage of disability @ 50% neither attributable nor aggravated by military service. His further submission is that applicant while serving with 512 ASC Bn was injured and treated in Military Hospital, Jodhpur from 15.01.1986 to 27.05.1986 and Doctors have advised him for longer treatment for full recovery, but applicant was invalided out from service within 4 ½ months in a medically unfit condition alongwith two escorts on 02.08.1986. Therefore, in view of these reasons applicant is eligible for grant of disability pension.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since the percentage of disability was @ 50% but being NANA therefore, condition for grant of disability pension is not fulfilled in terms of Para 173 of Pension Regulations for the Army, 1961, Part-I. The primary conditions for grant of disability is, unless otherwise specifically provided - disability pension may be granted to an individual who is invalided from service on account of a disability which should be attributable to or aggravated by military service and is assessed at 20% or over. Therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He pleaded for dismissal of O.A.

5. We have heard learned counsel for both sides and perused the material placed on record.

6. We also take note that applicant developed symptoms of this disease for the first time on 09.08.1983 i.e. within five years of his enrolment in which he fell down from roof of his house and sustained grievous head injury resulting in fracture Calcaneum (Rt) and was placed in low medical category. Later, applicant was admitted to Military Hospital, Jodhpur on 15.01.1986 for Drug Dependence (Cannabis) and not for the injury which he sustained on 09.08.1983 but his medical category was downgraded w.e.f. January 1984 on account of Drug Dependence. Therefore, there appears to be strong weightage in the stand of the respondents that applicant's disability '**SCHIZOPHRENIA**' is not connected to military service as opined by the IMB. Further, the Chief Controller of Defence Accounts (P)

Allahabad, after due examined of the case in consultation with Medical Advisor (P) applicant's disability in the light of relevant rules and finally rejected it being neither attributable to nor aggravated by military service. Relevant extract of Invaliding Medical Board proceedings of the graded Specialist (Psychiatry), Military Hospital, Jodhpur is as under:-

*OPINON-"An old case of Drug Dependence (Cannabis) in low medical category since January 1984 (CEE 6/12, 6/12, BEE 6/12) was admitted with relapse of abnormal behaviour and history of smoking Ganja. Psychology symptoms were psychotic in nature characterized by social withdrawal, poverty of ideation, with dull, depressed effect, psychomotor retardation, impaired insight and judgment and a transient episode of catatonic stupor. There psychotic symptoms revealed and underlying Schizophrenic illness.*

*His response to treatment with antipsychotic drug, ECTs were slow and partial and residual feature persist.*

*In view of the above, in my option this is a case of Schizophrenia and also Drug Dependence (Cannabis) as thought earlier. In view of the relapsing nature of this psychotic illness, and persistence of residual feature he is recommended to be invalided out of service in medical Category BEE."*

7. We are in agreement with the opinion of IMB proceedings which have held applicant's disability 'Schizophrenia' as not attributable to military service. In view of the foregoing, and the fact that the disease manifested within about five years of enrolment, we are in agreement with the opinion of IMB that the applicant's disability is neither

attributable to nor aggravated by military service and he is not entitled to disability pension.

8. Apart from, 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 20.11.2017, 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 five 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*

10. The Invaliding Medical Board has categorically held that the applicant 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.

11. The Invaliding Medical Board conducted on applicant has assessed his disability @ 50% for life neither attributable to nor aggravated by military service for which he is not entitled to disability pension in terms of Hon'ble Supreme Court judgment in the case of ***Union of India & Ors vs Kesar Singh***, delivered in Civil Appeal No 762/2001) decided on 15.04.2008.

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

13. No order as to costs.

14. Pending applications, if any disposed off.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 30<sup>th</sup> September 2021

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