

**Court No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 474 of 2022**

Thursday, this the 15<sup>th</sup> day of December, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**“Hon’ble Lt. Gen. Rakesh Kumar Anand, Member (A)”**

Ex. AC (U/T) Amit Kumar Upadhyay, S/o Umesh Kumar Upadhyay, R/o Village -Kripalpur, P.O. - Sonawati, District - Ballia, Uttar Pradesh – 277402.

..... **Applicant**

Ld. Counsel for the Applicant : **Shri Raj Kumar Mishra**, Advocate  
**Dr. Abhay Kant Upadhyay**, Advocate and  
**Shri Karuna Kant Upadhyay**, Advocate.

Versus

1. The Union of India through Principal Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of the Air Staff, Air HQs, Vayu Bhawan, Rafi Marg, New Delhi.
3. The Directorate of Air Veteran, Air Headquarters (Subroto Park), AFRO Building, Subroto Park, New Delhi – 110010.
4. The Air Officer Commanding, Air Force Record Office, Subroto Park, AFRO Building, Subroto Park, New Delhi – 110010.
5. The Joint Controller Defence Accounts (Air Force), AFRO Building, Subroto Park, New Delhi -110010.

.....**Respondents**

Ld. Counsel for the : **Shri Arun Kumar Sahu** , 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:-

- (a) *To issue/pass an Order or direction of appropriate nature to the respondents to set aside /quash the impugned orders of rejection of disability pension air RO/3012/8310266/P&WW(DP) IMB dated 24.04.2006, along with Air HQs/41002/957/AC(U/T) PA-III dated 27.10.2006 and Second appeal No. 1 (10)/2007/D (Pen-A & AC) dated 12.07.2007. {(Annexure 1(Colly))}.*
- (b) *To issue/pass an order or direction of appropriate nature to the respondents directing them to the grant disability pension from the date of discharge i.e. 23.02.2006.*
- (c) *To issue/pass an Order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (e) *Allow this application with exemplary costs.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Air Force on 16.06.2003 and invalided out from service on 22.02.2006 (AN) in Low Medical Category. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Military Hospital, Chennai -32 on 03.01.2006 assessed his disability '**MEDULLO BLASTOMA (OPTD) C71.1**' @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 09.03.2006 which was communicated to the applicant vide letter dated 24.04.2006. The applicant preferred First Appeal which too was rejected vide letter dated 27.10.2006. The applicant preferred Second Appeal which too was rejected vide letter dated 12.07.2007. 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 Air Force 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 Invaliding 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 153 of Pension Regulations for the Indian Air Force, 1961 (Part-I), which stipulates *that, "Unless*

*otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over".* Accordingly, the applicant was informed about the rejection/non-entitlement of disability element. 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 16.06.2003, and the applicant's disease, which is a kind of cancerous brain tumour, was found to be suffering with in medical test first started on June 2004, i.e. within one year of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than one year 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 RMB that the disease is NANA. In view of the foregoing and the fact that the disease manifested in less than one year of enrolment, we are in agreement with the opinion of Invaliding 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 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.

(Lt. Gen. Rakesh Kumar Anand)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 15 December, 2022

AKD/