

E-Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 19 of 2022

Tuesday, this the 13th day of December, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 15456766X Rect Soumya Ranjan Swain
S/o Alok Ranjan Swain
R/o Village – Sarasuda, Post Office – Diddhe Swarpurthe Biridi,
District – Jagatsinghapur (Orissa) - 754100

.... **Petitioner**

Ld. Counsel for the Petitioner: **Shri Ashok Kumar**, Advocate

Versus

1. Union of India, through the Secretary, Government of India, Ministry of Defence, South Block, Army Headquarters, New Delhi-110105.
2. The Chief of the Army Staff, Sena Bhawan, IHQ of MoD (Army), Defence Headquarters, post Office – New Delhi – 110011.
3. Officer-in-Charge, Army Medical Corps, Record Office, PIN – 900450, C/o 56 APO.
4. The Officer-in-Charge, Principal Controller of Defence Accounts (Pension), Sadar Bazar, Draupadi Ghat, Allahabad – 211014.

... **Respondents**

Ld. Counsel for the Respondents : **Shri R.C. Shukla**,
Central Govt Counsel

ORDER

1. The petitioner, being discharged from the Army on the ground of medical disability filed OA No. 79 of 2018 before the AFT (RB) Kolkata under Section 14 of the Armed Forces Tribunal Act, 2007, which has been transferred to this Tribunal and has been registered as T.A. No. 19 of 2022, whereby the petitioner has sought following reliefs:-

- “(a) Admit the original application.
- (b) To pass an appropriate order directing the concerned respondent authorities and each one of them to grant disability pension to your petitioner along with interest from the date of discharge from service by disposing of the First Appeal dated 13th November, 2017.
- (c) To produce all the records in connection with the interest case before this learned Tribunal, for the ends of justice.
- (d) Any other order or further orders as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”

2. Brief facts of the case are that petitioner was enrolled in the Indian Army on 14.06.2016 and was invalided out of service w.e.f. 17.06.2017 (FN) in low medical category ‘EEE’ under Army Rule 13 (3), Table IV of Army Rules, 1954 due to disability “**SCHIZOPHRENIA**”, assessed @ 40% for life and considered as neither attributable to nor aggravated by military service (NANA). The

petitioner submitted letters dated 13.11.2017 and 15.11.2017 for grant of disability pension which were rejected by the respondents, hence, no disability pension was paid to the petitioner. The petitioner was asked to deposit an amount of Rs. 3066/- against the debit balance due towards him and in absence of regularization of debit balance, case is held up for further process with concerned agency. Being aggrieved, the petitioner has filed this Transferred Application for grant of disability pension.

3. Learned counsel for the petitioner submitted that petitioner was enrolled in the Army in medically and physically fit condition. It was further pleaded that a person 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. In this regard, he submitted that for grant of disability pension the law is settled by the Hon'ble Apex Court in **Dharamvir Singh vs. Union of India & Others**, 2013 (7) SCC 316 and **Sukhwinder Singh vs. Union of India & Ors** Civil, Appeal No. 5605 of 2010, and pleaded for disability to be considered as attributable to or aggravated by military service and accordingly, petitioner be granted disability pension.

4. On the other hand, Ld. Counsel for the respondents submitted that disability of the petitioner has been considered as neither attributable to nor aggravated by military service and constitutional in nature by the medical board, hence in view of Rule 173 of Pension Regulation for the Army, 1961 (Part-1), the petitioner is not entitled for disability pension. He also submitted that petitioner was asked to deposit an amount of Rs. 3066/- against the debit balance due towards him vide AMC Records letter dated 23.05.2018 but the petitioner was silent on this issue and in absence of regularization of debit balance, his case is held up for further process with concerned agency. He pleaded for dismissal of O.A.

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

6. On careful perusal of the records and medical documents, it has emerged that petitioner was enrolled on 14.06.2016 and the disease had first started/originated in January, 2017. After a detailed investigations by the classified specialist Psychiatrist, the petitioner was not found fit to continue in service being a case of Schizophrenia and was recommended by the Invaliding Medical Board to be invalided out of service in medical category 'EEE'.

7. The petitioner was invalidated out of service being low medical category EEE as recommended by IMB. Further, the competent authority while adjudicating the disability pension claim of the petitioner has also examined disability in the light of relevant rules and finally rejected being neither attributable to nor aggravated by military service, being constitutional in nature and not connected to service. We are in agreement with the opinion of IMB proceedings, hence, petitioner is not entitled to disability pension.

8. Apart from it, in identical factual background this Tribunal dismissed T.A. No. 1462/2010, ***Bhartendu Kumar Dwivedi vs. Union of India and others***, vide order dated 23.05.2011 wherein petitioner 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. Said order of this Tribunal has been upheld by the Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 preferred against the aforesaid order, has been dismissed on delay as well as on merits vide order dated 20.11.2017.

9. Additionally, in Civil Appeal No 7672 of 2019, ***Ex Cfn Narsingh Yadav vs Union of India & Ors***, it has again been held by the

