

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)**

ORIGINAL APPLICATION No.439 of 2021

Thursday, this the 24th day of February, 2022

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

1486620-F Ex. Spr. Suresh Chandra Dumka S/o Sri KeshavDattDumka, R/o New Friends Colony, DahariyaManpur West, P.O. Manpur (West) Haldwani, District – NainitalUttarakhand.

..... **Applicant**

Ld. Counsel for the : **ShriDinesh Gahtori**, Advocate
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, SenaBhawan, New Delhi.
3. Dte. General Pers Services, AG’s Branch, IHQ of MoD (Army), Room No. 11, Brassey Avenue, Church Road, New Delhi-110001.
4. OIC Records, Bengal Engineer Group, PIN 908779, C/o 56 APO.
5. Central Commandant, Bengal Engineer Group Records, PIN 900477 C/o 56 APO.
6. The P.C.D.A. (Pensions), G-4 Section, Allahabad, Uttar Pradesh,

.....**Respondents**

Ld. Counsel for the : **ShriRajesh Sharma**, Advocate
Respondents. CentralGovt.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:-

“That in view of the facts and circumstances stated above, it is expedient and necessary in the interest of justice that this Hon’ble Tribunal may graciously be pleased to summon the record pertaining to the applicant set aside the order of rejection the disability pension to the petitioner, order dated 29.12.1999 passed by Appellate Authority rejecting the appeal of the petitioner and letter dated 11.09.2018 rejecting the 2nd Appeal of the petitioner AND be pleased to direct the respondents to give the Disability pension to the petitioner w.e.f. the date of discharge 20.04.1996, otherwise the applicant shall suffer irreparable loss and injury.

To award the cost of the application in favour of the applicant, otherwise the petitioner shall suffer irreparable loss and injury.”

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 24.02.1992 and was discharged from service on 30.04.1996 (AN) in Low Medical Category under Rule 13 (3) Item III (iv) of the Army Rules, 1954. At the time of discharge from service, the

Release Medical Board (RMB) held at Military Hospital, Roorkee on 25.03.1996 assessed his disability **'GENERALISED SEIZURE (INV) 345'** @20% for two years 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 29.01.1997 which was communicated to the applicant vide letter dated 05.03.1997. The applicant preferred First Appeal which too was rejected vide letter dated 29.12.1999. The applicant preferred Second Appeal which too was rejected vide letter dated 11.09.2018 which was communicated to the applicant vide letter dated 19.09.2018. The applicant preferred grievances against rejection of disability pension on 27.06.2020 and 14.06.2021 which too were replied vide letters dated 08.07.2020 and 16.06.2021 respectively. 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 discharged 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 RMB 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 173 of Pension Regulations for the Army, 1961 (Part-I), which stipulates *that, "Unless otherwise specifically provided a disability pension consisting of service element and disability element 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 in non-battle casualty and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."* Accordingly, the applicant was informed about the rejection/non-entitlement of disability element. The Ld. Counsel for the respondents further

submitted that claim for disability pension has rightly been rejected by the competent authority in view of Regulation 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 service element of disability pension/invalid pension is ten years, but in the instant case the applicant has put in only 04 years, 02 months and 16 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 documents, it has been observed that the applicant was enrolled on 24.02.1992, and the disease applicant was found to be suffering with in medical test first started on 10.04.1993, 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 RMB 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 CfnNarsinghYadavvs 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 AbhayRaghunathKarve) (Justice Umesh Chandra
Srivastava)Member (A) Member (J)

Dated :24 February, 2022

AKD/-