

Court No. 1 (E- Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 684 of 2021**

Wednesday, this the 16th day of February, 2022

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

No. 936801-R Ex. LAC Rahul Kumar Pal, Son of Shri Mahesh Babu, R/o Village – Purwa Sukhamman, Post – Bandhmau, Bidhuna, District – Auraiya-206243 (U.P.).

..... **Applicant**

Ld. Counsel for the : **Shri R. Chandra**, Advocate.
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. The Chief of the Air Staff, Air Headquarters, New Delhi-110011.
3. Directorate of Air Veterans, Air Headquarters, SMC Building, 1st Floor, Subroto Park, New Delhi-110010.
4. Joint CDA (Air Force), Subroto Park, New Delhi-110010.

.....**Respondents**

Ld. Counsel for the : **Shri Ashish Kumar Singh**, 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:-

- (I) The Hon'ble Tribunal may be pleased to set aside the order dated 16.01.2013 (Annexure No. A-1), 23.05.2014 (Annexure No. A-2) and order dated 09.03.2016 (Annexure No. A-3).
- (II) The Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 16.12.2012 (next date of discharge) along with its arrears and interest thereon at the rate of 18% per annum.
- (III) Hon'ble Tribunal may be pleased to grant benefit of rounding of disability pension @50 Percent in terms of Ram Avtar's Case.
- (IV) Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Air Force on 01.04.2009 and was invalided out from service on 15.12.2012 (AN) on having been found medical unfit service in IAF after rendering 03 years 258 days of service. At the time of invaliding from service, the Invaliding Medical Board (IMB) held at AF Command Hospital (Air Force) on 16.10.2012 assessed his disability '**OBSESSIVE COMPULSIVE DISORDER (F42)**' @40% 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 06.12.2012 which was communicated to the applicant vide letter dated 16.01.2013. The applicant preferred First Appeal which too was rejected vide letter dated 23.05.2014. The applicant preferred Second Appeal which too was rejected vide letter dated 09.03.2016. 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 Indian 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. Ld. Counsel for the applicant relied upon the law laid down by the Hon'ble Apex Court in the case of ***Union of India & Another Versus Rajbir Singh*** (Civil Appeal No. 2904 of 2011, decided on 13.02.2015). He also relied upon the order dated 18.05.2018 passed by this Tribunal in the case of ***Ex. Corporal Kuldeep Upadhyay Versus Chief of the Air Staff and Others*** (Original Application No. 435 of

2017) and order dated 22.10.2018 passed by this Tribunal in the case of **Ex. LAC Layak Singh Versus Union of India and Others** (Original Application No. 233 of 2016). 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 IMB 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 Air Force, 1961 (Part-I), which stipulates that, *"Unless otherwise specifically provided, a 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 per cent or over. The question whether a disability is attributable to or aggravated by air force service shall be determined under the regulations in Appendix II"*. Accordingly, the applicant was informed about the rejection/non-entitlement of disability pension. The Ld. Counsel for the respondents further submitted that claim for disability pension has rightly been rejected

by the competent authority. 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 01.04.2009, and the disease applicant was found to be suffering with in medical test first started on 24.07.2012, i.e. within four years of joining the service. Wg. Cdr. Amitabh S. Saxena, Classified Specialist (Psychiatry), Command Hospital (Air Force), Bangalore has opined as under:-

“This 24 years’old serving air warrior (LAC/Adm Asst) with about three years’ service was referred for psychiatric evaluation at the behest of the unit authorities.

Unit report dated 02 Aug 12 – ‘Non drinker, average professional, satisfactory regimental, average motivation, average general outlook and social interaction, impulsive, normal behaviour prior to and since the onset of the problem, the air warrior claims to be suffering from OCD. His behaviour confirms to disorder, however, it appears that he is a borderline case’.

A detailed evaluation revealed that the patient had anankastic traits since his school days. He would check, and feared that he had forgotten what he had studied. As per progressed in school, he was unable to retain what he had studied, and his academic performance deteriorated. He also started feeling that he was contaminated if he saw dirt, and strived for perfection. In 2007, as his symptoms continued, he was taken to civil psychiatrist. He was apparently not prescribed any medications. However, as the ailment exacerbate his father, a serving SNCO, bought him to this hospital. The patient apparently had constipation with the medicines prescribed, and discontinued them.

He joined IAF in 2009. Though symptomatic, he was able to complete his training despite having unrefreshing sleep and tiredness. In Oct 11, after he was detailed in the central registry, his checking ritual increased, with a consequent decrease in his efficiency. He also tried some Ayurvedic medicines, with little relief. He did not want to be put on Guard duty, and when the matter was put up to the unit authorities, he was referred for evaluation. In the interim, he had attempted to self-medicate his symptoms

with alcohol, but to no avail. He claimed to have abstained over the year preceding his referral.”

7. In the above scenario, we are of the opinion that since the disease has started in less than four years of his enrolment in Air Force, hence by no stretch of imagination, it can be concluded that it has been caused by stress and strains of military service. Further, the applicant had been symptomatic since his school days and he was treated by a civil psychiatrist in 2007. 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 Air Force service, we are in agreement with the opinion of the IMB that the disease is NANA. In view of the foregoing and the fact that the disease manifested in less than four years of enrolment, we are in agreement with the opinion of IMB 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 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. Law laid down by the Hon'ble Apex Court in the case of ***Union of India & Another Versus Rajbir Singh*** (Supra) is not applicable in the instant case in view of Judgment of Hon'ble Apex Court in the case of ***Ex Cfn Narsingh Yadav vs Union of India & Ors*** (Supra), decided on 03.10.2019, wherein while referring the decision in the case of ***Union of India & Another Versus Rajbir Singh*** (Supra) the Hon'ble Apex Court has held that "*Relapsing forms of mental disorders which have intervals of normality and Epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member*".

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

12. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 16 February, 2022

AKD/-