

**Reserved**

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 353 of 2023**

Friday, this the 28<sup>th</sup> day of February, 2025

**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

No. 23000070W Ex. Gnr. Harijan Kirti Bhai Ajeshi, S/o shri Ajeshi Bhai, of the HQ Army Air Defence and presently R/o Village & PO Khad Mohan Nagar, District – Bulandshahar (UP)-203001.

**..... Applicant**

Ld. Counsel for the Applicant : **Shri Ashok Singh**, Advocate  
**shri Vikas Chauhan**, Advocate

Versus

1. Union of India through its Secretary, Govt. of India, Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MOD (Army), DHQ PO, New Delhi-110011.
3. Commanding Officer, 109 Lt AD Regt, PIN-926109, C/o 56 APO.
4. OIC, Army Air Defence Records, PIN-908803, C/o 99 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj (UP).

**..... Respondents**

Ld. Counsel for the Respondents. : **Shri Ramesh Chandra Shukla**, Advocate  
Central Govt. Standing Counsel

**ORDER**

**“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- "8.1 To quash/set aside the impugned order dated 18 Jan 2023, passed by the Integrated Headquarters of MOD (Army), New Delhi (Respondent No. 3) which is annexed with compilation No. I as a Annexure N. A-1 to this present application and further pass the order or direction directing to the appropriate authority to carry out the re-survey medical board of the applicant.*
- 8.2 To pass the order or direction directing to the respondents that after Re-Survey Medical Board (RSMB), if the applicant fit for further service, then he re-instate to the service to their parent unit or if he again declared as low medical category LMC S5, then grant the disability pension to the applicant at the rate of 40% rounding off 50% for life being Invalided out from service due to cause of the attributable to Military Service.*
- 8.3 Issue an appropriate order or direction as this Hon’ble Tribunal may deem fit and proper in the demand of justice.*

*8.4 Issue an order or direction awarding the cost of the application together with all legal expenses incurred by the applicant.”*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 19.06.2017 and was invalided out from service on 05.09.2019 (AN) in Low Medical Category under Rule 13 (3) Item III (iv) of the Army Rules, 1954 after rendering 02 years, 02 month and 16 days of service. Before invalidation from service, the Invaliding Medical Board (IMB) held at Military Hospital, Hisar on 22.07.2019 assessed his disability '**ACUTE AND TRANSIENT PSYCHOTIC DISORDER (F-23)**' @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 21.03.2020. The applicant preferred First Appeal dated 24.04.2021. When the aforesaid First Appeal has not been decided by the respondents within stipulated time, the applicant preferred Original Application No. 529 of 2021 before this Tribunal which was disposed off by this Tribunal vide order dated 15.09.2021 with direction to the respondents to decide the same within a period of four months. The applicant's First Appeal was rejected vide

letter dated 27.06.2022 which was communicated to the applicant vide letter dated 08.07.2022. The applicant preferred Second Appeal dated 14.07.2022 which too was rejected by the respondents vide letter dated 18.01.2023 which was communicated to the applicant vide letter dated 18.02.2023. 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. The authority concerned without observing the mandatory periods of 96 weeks passed the summary and opinion dated 31.05.2019 against the applicant for Invalided out from service considering the true facts and reasons as well as without considering the investigation report. For the case of disability 'ACUTE AND TRANSIENT PSYCHOTIC DISORDER' some symptoms are mandatory to show the individual for their down gradations of low medical category as LMC S5. The onset of the disorder is manifested by an obvious change to an abnormal psychotic state. This is considered to be abrupt when it occurs within 48 hrs or less. Abrupt onset often indicates a better outcome. Full recovery occurs within

three months and often in a shorter time (a few days or weeks). However, a small number of patient develop persistent and disabling states. 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. When the applicant challenged the RMB proceedings before this Tribunal, respondents by way of overwrite mentioned the percentage of disablement @20% by filing the Counter Affidavit. As soon as the applicant was produced before the Re-Assessment Medical Board, the concerned authority fixed the percentage of disability of the applicant at the lowest level i.e. 10% only under the provisions of a new policy vide Ministry of Defence letter No. 16(3)/2023/D(Pen/Pol()) Vol-II dated 21.09.2023 whereas the applicant was invalided out of service w.e.f. 05.09.2019 through IMB in which his percentage of disability element was fixed @40% for life under the provisions of Chapter VII of Guide to Medical Officers (Military Pensions), 2008. Ld. Counsel for the applicant

relied upon the law laid down by the Hon'ble Apex Court in the case of **Secretary, Ministry of Defence & Others Vs. Ajit Singh**, Civil Appeal No. 16 of 2003, decided on 06.05.2009, order dated 11.02.2016 passed by this Tribunal in Original Application No. 177 of 2014, **Ex. Sepoy Nagendra Kumar Pandey Vs. Union of India & Others**, order dated 07.03.2024 passed by this Tribunal in Original Application No. 646 of 2023, **4287653X Ex. Rect. Prashant Kumar Mishra Vs. Union of India & Others**. The Ld. Counsel for the applicant, on account of aforesaid, prayed to issue a direction to the appropriate authority to carry out the Re-Survey Medical Board of the applicant and if the applicant is found fit for further, then he be reinstated to the service and if he again declared as low medical category LMC S5 then applicant be granted disability pension @40% to be rounded off 50% for life.

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. The applicant while serving with 109 Light Air Defence Regiment (Self Propelled), he was admitted in Military Hospital, Kota on 04.10.2018 for diagnosis "PSY (INV) –

NAD" and transferred to Military Hospital, Jodhpur on 07.10.2018. The applicant was admitted in Military Hospital, Jodhpur on 08.10.2018 for diagnosis "PSY (INV\_ = NAD" and discharged on 12.12.2018. the applicant was admitted in Military Hospital, Kota on 11.02.2019 for diagnosis "CERVICAL SPONDYLOSIS" and discharged on 07.03.2019. The applicant was again admitted in Military Hospital, Kota on 12.03.2019 for diagnosis "ACUTE AND TRANSIENT PSYCHOTIC DISORDER" and transferred to Military Hospital, Jaipur on 14.03.2019. The applicant was admitted in Military Hospital, Jaipur on 15.03.2019 for diagnosis "ACUTE AND TRANSIENT PSYCHOTIC DISORDER" and transferred to Military Hospital, Hisar on 24.06.2019 which recommended for holding Invalidment Medical Board and further disposal. Thereafter, the applicant was admitted in Military Hospital, Hisar on 25.06.2019 for further treatment. The applicant examined at Military Hospital, Hisar and recommended to be released in low medical Category 'S5H1A1P1E1' for the aforesaid disability. Subsequently, the applicant was brought before the IMB on 22.07.2019 at Military Hospital, Hisar which opined the applicant's disability "ACUTE AND TRANSIENT PSYCHOTIC DISORDER (F-23)" @20% for life

as NANA by service which was approved by the Headquarters 1 Corps and confirmed by Headquarters, South Western Command on 16.08.2019. Based on recommendation of the IMB the applicant was invalided out from service with effect from 05.09.2019 (AN). As per Regulation 81 of the Pension Regulations for the Army, 2008 (Part-I) which stipulates that "*Service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may, be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section*" the applicant is not entitled for the grant of disability pension. Along with Supplementary Counter Affidavit, the respondents have filed copy of the Re-Assessment Medical Board (AFMSF-17) (Ver 2023) held at Military Hospital, Dharangadhra which assessed the applicant disability @10% for life as per assessment sheet dated 09.01.2024 with effect from 11.01.2024. 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 19.06.2017, and the disease applicant was found to be suffering with in medical test first started on 12.03.2019, i.e. within two years of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than two years 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 two 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 and 21 are 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. The law laid down by the Hon'ble Apex Court in the case of **Secretary, Ministry of Defence & Others Vs. Ajit Singh** (supra) is not applicable in the instant case as the aforesaid judgment was pronounced on 06.05.2009 whereas in the case of **Ex Cfn Narsingh Yadav vs Union of India &Ors**, the judgment was pronounced on 03.10.2019 as such the later law laid down by the Hon'ble Apex Court shall prevail. Further, the order dated 11.02.2016 passed by this Tribunal in **Ex. Sepoy Nagendra Kumar Pandey Vs. Union of India & Others** (supra) is not applicable in the instant case as the facts of that case was different than to the instant case. Further, the order dated 07.03.2024 passed by this Tribunal in **4287653X Ex. Rect. Prashant Kumar Mishra Vs. Union of India & Others (supra)** is also not applicable in the instant case as in that case the applicant was held 'Not entitled for the grant of disability pension" and as prayed by him he was granted Invalid Pension but in the instant case there is no such prayer for grant of Invalid Pension.

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.

**(Lt. Gen. Anil Puri)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 28 February, 2025

AKD/-