

**Court No. 1 (E-Court)****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 204 of 2019**

Friday, this the 9<sup>th</sup> day of July, 2021

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

No. 15775934-X Ex. Rect. Abanish Kumar Singh, S/o Shri Hans Ram, Village – Bhawanigarh, Post Kaithouli, District – Mainpuri (U.P.), Pin – 206302.

..... Applicant

Ld. Counsel for the Applicant : **Shri Rohitash Kumar Sharma**, Advocate.

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQ of the Ministry of Defence (Army), DHQ PO, New Delhi-110011.
3. Additional Director General Personnel Service (PS-4), Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi-110011.
4. Sena Vayu Raksha Abhilekh, Army Air Defence Records, PIN-908803, C/o 99 APO.
5. Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad, U.P.

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Anurag Mishra**,  
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) Call for records including the Invaliding medical board proceedings dated 13.11.2001.
- (b) Quash the order dated 17.02.2018 (annexed as Annexure - A-4) and 03.02.2018, 28.10.2004 (annexed as Annexure A1) of respondents rejecting the appeal of the Applicant dated 30.12.2017 for grant of disability pension as well as finding of medical board by which the disability of the applicant has been found to be not attributable or aggravated by military service.
- (c) Issue directions to respondents to grant disability pension to the Applicant w.e.f. 08.12.2001 and arrears to be paid along with interest of 18 percent in a time bound manner.
- (d) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.

2. Briefly stated facts of the case are that applicant was enrolled in the AD ARTY of Indian Army on 07.07.2001 and was invalided out from service on 07.12.2001 (AN) in

Low Medical Category under Rule 13 (3) Item IV of the Army Rules, 1954. At the time of invaliding from service, the Invaliding Medical Board (IMB) held at Military Hospital, Devlali on 13.11.2001 assessed his disability 'GENERALISED TONIC CLONIC SEIZURE (IDIOPATHIC) (345)' @20% permanent and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 28.10.2004. The applicant preferred First Appeal and Second Appeal which too were rejected vide letters dated 03.02.2018 and 19.11.2018 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 invalided out from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. He pleaded that the

applicant was under stress and strains due to rigors of service conditions which may have led to occurrence of the disability. He further stressed that the Medical Board has also mentioned onset/origin of the disease during service/training, therefore, the disability should be accepted as attributable to military service. 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 Rule 173 of Pensions Regulations for the Army, 1961 (Part-I), which stipulates that, "unless otherwise specifically provided, a disability pension 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 and is assessed at 20% or over, but in the instant case the disability of the applicant has been assessed at 20% permanent and NANA, therefore, the applicant is not entitled to disability pension. The Ld. Counsel for the respondents further submitted that claim for disability

pension has rightly been rejected by the competent authority in view of para 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 invalid pension is ten years, but in the instant case the applicant has put in only 05 months 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 medical documents, it has been observed that the applicant was enrolled on 07.07.2001, and the disease applicant was found to be suffering with in medical test first started on 20.07.2001, i.e. within 13 days of joining the service. On 21.07.2001 he was administered treatment at Military Hospital, Devlali. He was transferred to INHS, Aswini on 23.07.2001 for opinion of senior advisor. On admission in the Hospital the case history of the applicant was endorsed by Lt. Col. S. Rohatgi, Classified Specialist (Med) & Neurologist, INHS Aswini as under:-

*“This 18 yrs old recruit was transferred from MH Devlali on 25.7.01 with h/o one episode of Generalised tonic clonic seizure after which he remained unconscious for 15 minutes. No detailed nature account was recorded. However patient denies no past h/o unconsciousness. No h/o head injury.*

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*A case of Generalised Tonic Clinic Seizure (Idopathic)*

*He is unlikely to become a fit soldier*

*Rec to be invalidated out of service in cat P5.”*

7. In the above scenario, we are of the opinion that since the disease has started in less than thirteen days 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 IMB that the disease is NANA. Additionally, a recruit is akin to a probationer and hence, prima facie the respondents as an employer have every right to discharge a recruit who is not meeting the medical requirement of military service and is not likely to become a good soldier. In view of the foregoing and the fact that the disease manifested in less

than thirteen days of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.

8. Apart from, 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. 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 Abhay Raghunath Karve)  
 Member (A)

(Justice Umesh Chandra Srivastava)  
 Member (J)

Dated : 09 July, 2021

AKD/-