

**Court No. 1 (E Court)****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 440 of 2020**

Friday, this the 09<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. 15742070Y Ex Rect. Sachin, Son of Shri Hari Nandan,  
Presently residing at House No A-387, near Sai Complex, Maidan  
Garh Road, Chhatarpur, New Delhi – 110014.

..... Applicant

Ld. Counsel for the: **Shri Nitin Kumar Mishra and**  
Applicant **Shri Kamlesh Kumar Shukla, Advocate**

Versus

1. Union of India, through its Secretary, Ministry of Defence,  
(Army), South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the  
Ministry of Defence (Army), South Block, New Delhi-  
110011.
3. Principal Controller of Defence Accounts (Pension),  
Draupadi Ghat, Allahabad (U.P.)-211014.
4. Officer-in-Charge Records, Signals Record, Pin No 908770,  
C/o 56 APO.

.....Respondents

Ld. Counsel for the Respondents. : **Ms. Amrita Chakraborty,**  
**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). *To quash and set aside the impugned order dated 01.12.2016 contained in Annexure No. 1 to this original application.*
- (ii). *To direct the respondents to conduct the review medical board in view of the rules revision of rules and procedures regarding grant of disability pension/ special family pension to Armed Forces Personnel/NOK.*
- (iii). *To direct the respondents to pay the disability pension @ 20% w.e.f. 15.01.2016 for life.*
- (iv). *Any other order or direction which this Hon’ble Tribunal may deem fit and proper under the circumstances of the case may also be passed.*
- (v). *To allow this original application with costs.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 20.02.2015 and was invalided out from service on 15.01.2016 in Low Medical Category under Rule 13 (3) Item IV of the Army Rules, 1954. At the time of discharge, the Invaliding Medical Board (IMB) held at Military Hospital, Jabalpur on 25.09.2015 assessed his disability ‘**NEURO CYSTICERCOSIS**’ @20% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. His claim for grant of disability pension was rejected vide order dated 28.02.2017 being NANA. The applicant filed O.A. No 43 of 2017 at Principal Bench, New

Delhi for grant of disability pension which was withdrawn with liberty to file a fresh. It is in this perspective that the applicant has preferred the present Original Application for grant of disability pension.

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 service conditions which may have led to occurrence of the disability. 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 neither attributable to nor aggravated (NANA) by military service, the applicant is not entitled to disability pension. He further stressed that Invaliding Medical Board has also opined that disease could be existing before entering in military service and the applicant is unlikely to withstand the stress of training and is unlikely to serve as a fit soldier. He further accentuated that the applicant is not

entitled to disability pension in terms of Rule 81 (a) of Pension Regulations for the Army 2008 (Part-1) and 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% for life 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 295 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 medical documents, it has been observed that the applicant was enrolled on 26.03.2015, and the disease applicant was found to be suffering with in medical test first started within four weeks of joining the service. He was

administered treatment at Military Hospital, Jabalpur. On admission in the Hospital the case history of the applicant was endorsed by Lt Col A. Mukherjee, Gd Spl Med & Neurology, as under:-

*“This 19 year old recruit had multiple episodes of focal onset seizures with secondary generalisation within over past 4-5 yeas last one is witnessed by his buddies during training. His neuroimaging (MRI Branch) revealed multiple (3-4) ring enhancing lesions in brain suggestive of Neurocysticercosis. He was treated with antiepileptic drugs (AED) and given cysticidal therapy for 04 weeks under cover of steroids. He is seizure free on AEC. He will however require anti-epileptic drug therapy for at least three years. He is unlikely to withstand the stress of training and is unlikely to serve as a fit soldier.”*

7. In the above scenario, we are of the opinion that since the disease has started in less than four weeks 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 four weeks of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.

8. Apart from, in similar factual background a Regional Bench of Armed Forces 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.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 09 July, 2021

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