

Court No. 1

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

Original Application No. 10 of 2022

Friday, this the 27th day of May, 2020

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 10212985 Ex Sepoy Vais Dependra Bahadur Singh,
S/o Shri Deshpat Singh, R/o House No 91, J.L. Nehru
Road, Sohabatiabagh, Allahabad (UP).

.... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army) New Delhi-110011.
3. Officer-in-Charge, Records the Rajput Regiment, PIN-900427, C/o 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

... Respondents

Ld. Counsel for the: **Shri Ashish Kumar Singh**,
Respondents Central Govt Counsel.

ORDER (Oral)

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

(I) The Hon'ble Tribunal may be pleased to strike down para 4 of the letter dated 16.07.2020 issued by respondent No 1 (Annexure A/1).

(II) The Hon'ble Tribunal may be pleased to direct the respondents to grant the invalid pension to the applicant in view of letter dated 16.07.2020 along with its arrears from the date of 04.01.2019 along with interest at the rate of 24% per annum.

(III) Any other appropriate writ, order or direction which the Hon'ble Court may deem just and proper in the nature and circumstances of the case.

2. Brief facts of the case are that the applicant was enrolled in 113 Infantry Battalion (Territorial Army), The Rajput Regiment on 17.11.1992 and was invalided out of service w.e.f. 23.12.1997 under Territorial Army Rule 14 (b) (iv) of Territorial Army Regulations, 1948 (Revised Edition-1976) in low medical category 'EEE' (psychology) due to disease 'Schizophrenia (ICD-295)' after having rendered 04 years, 02 months and 15 days of embodied service. The Invaliding Medical Board (IMB) has assessed his disability @ 50% for two years neither attributable to nor aggravated by military service (NANA). Disability pension claim of applicant was rejected vide order dated

02.12.1999 and thereafter appeal was also rejected vide order dated 28.05.2001. Records reveal that applicant had filed Civil Misc Writ Petition No 13503/2001 in the Hon'ble High Court of Judicature at Allahabd and after prolonged hearing the case was transferred to this Tribunal vide order dated 15.03.2010 which was re-numbered as T.A. No. 143/2010 and dismissed vide order dated 18.03.2013. Review Application filed against order dated 18.03.2013 was also rejected vide order dated 23.08.2016. Thereafter, applicant filed O.A. No. 582/2018 which was also dismissed by this Tribunal vide order dated 01.10.2021. It is in this perspective that this O.A. has been filed to strike down para 4 of letter dated 16.07.2020 and grant of disability pension to the applicant.

3. Learned counsel for the applicant pleaded that applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that a member 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

applicant was under stress of service conditions which may have led to occurrence of the disability. The learned counsel further pleaded to strike down para 4 of policy letter dated 16.07.2020 which is discriminatory in nature. He pleaded for disability pension to be granted to applicant.

4. On the other hand, learned Counsel for the respondents submitted that since the applicant's disability 'schizophrenia' has been assessed by the IMB as neither attributable to nor aggravated by military service, therefore, he is not entitled to disability pension/invalid pension and pension sanctioning authority/appellate authority have rightly rejected his claim for grant of disability/invalid pension. He pleaded for dismissal of O.A.

5. We have heard learned counsel for both sides and perused the material placed on record.

6. On careful perusal of the medical documents, it has emerged that on 29.04.1997 the applicant started behaving in an irrational manner and was admitted to Command Hospital, Eastern Command, Alipore Kolkata where the following was diagnosed :-

"This 25 yrs old GD Sep VDB Singh with about 5 years of service is a case of Schizophrenia. His psychotic illness manifested in Apr 97 for the first time. He developed complaints of lack of concentration,

uneasiness while on Temporary Duty to Fatehgarh (Apr 97) on return back of Temporary Duty, he was found to be very withdrawn disinterested in work, lacked interest in unpleasurable activities, lost sleep, less communication and remained absent minded.

A constitutional disorder not related to military service. Recommended to be invalided out in medical category 'EEE'.

7. The applicant developed symptoms of this disease for the first time after five years of enrolment while he was on temporary duty to Fatehgarh. The psychiatrist has endorsed that this is a constitutional disorder which manifested later. Therefore, there appears to be strong weightage in the stand of the respondents that applicant's disability 'SCHIZOPHRENIA ICD-295' is not connected to military service as opined by the IMB. Further, the Appellate Committee on First Appeals (ACFA) has also examined applicant's disability in the light of relevant rules and finally rejected being neither attributable to nor aggravated by military service. We are in agreement with the opinion of IMB proceedings and First Appellate Committee. In view of the foregoing, and the fact that the disease manifested later after enrolment, we are in agreement with the opinion of IMB that the applicant's disability is neither attributable to nor aggravated by military service and he is not entitled to disability pension.

8. The Govt of India, Ministry of Defence vide letter dated 16.07.2020 has issued certain guidelines for grant of disability/invalid pension and vide para 4 of ibid letter the provisions of the letter have not been made applicable to the personnel who were invalided out of service prior to 04.01.2019. Prior to 04.01.2019, personnel above 10 years of service were eligible for grant of invalid pension but as per aforesaid letter it has been held that this mandatory condition has been withdrawn and now personnel invalided out of service w.e.f. 04.01.2019 shall be eligible for grant of invalid pension irrespective of length of their service. The applicant was invalided out of service w.e.f. 23.12.1997, therefore he is not entitled to disability/invalid pension.

9. Apart from it, in identical factual background this Tribunal dismissed T.A. No. 1462/2010, **Bhartendu Kumar Dwivedi vs. Union of India and others**, vide order dated 23.05.2011 wherein 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. Said order of this Tribunal has been upheld by the Hon'ble Apex Court as

Civil Appeal Dy. No. 30684/2017 preferred against the aforesaid order, has been dismissed on delay as well as on merits vide order dated 20.11.2017.

10. Additionally, in Civil Appeal No 7672 of 2019, **Ex Cfn Narsingh Yadav vs Union of India & Ors**, 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 does not entitle a person for disability/invalid pension unless there are very valid reasons and strong medical evidence to dispute the opinion of Medical Board. Relevant part of the aforesaid judgment is as given 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. 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."

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

12. No order as to cost.

13. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 27.05.2022

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