

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 118 of 2022**Wednesday, this the 13th day of July, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**No. 13782830M Ex. Rect. Rajat Chand, S/o Shri Dinesh Chand,
R/o Village & Post – Bhulagaon, District – Pithoragarh (UK)-
262501.**..... Applicant**Ld. Counsel for the : **Shri D.S. Tiwari**, Advocate
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Sena Bhawan, New Delhi, PIN – 110106.
3. The OIC, Records JAK RIF, PIN-908774, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

..... RespondentsLd. Counsel for the : **Shri Vishwesh Kumar**, 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 rejection orders dated 26.10.2018, first appeal rejection vide order dated 28.06.2019 and second appeal dated 30.01.2020 after summoning the record of Medical Board Proceedings.*
- (II) *The Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from the date of discharge i.e. 27.04.2018 along with Broad Banding & its arrears and interest thereon at the rate of 18% per annum.*
- (III) *Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.*
- (IV) *Cost of the application.*

2. Briefly stated facts of the case are that applicant was enrolled in the JAK RIF regiment of Indian Army on 21.06.2017 and was invalided out from service on 26.04.2018 (AN) in Low Medical Category under Rule 13 (3) Item IV of the Army Rules, 1954. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Military Hospital, Jabalpur (Madhya Pradesh) on 16.02.2018 assessed his disability '**UNSPECIFIED PSYCHOSIS**' @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 27.10.2018. The applicant preferred First Appeal which too was rejected vide letter dated 10.06.2019 which was communicated to the applicant vide letter dated 28.06.2019. The applicant preferred Second Appeal which too was rejected vide letter dated 30.01.2020. The applicant preferred an application dated 15.08.2021 for grant of Disability Pension but of no avail. 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. 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 53 (a) of Pension Regulations for the Army, 2008 (Part-I). Accordingly, the applicant was informed about the rejection/non-entitlement of disability pension. 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 21.06.2017, and the disease applicant was found to be suffering with in medical test first started on 01.08.2017, i.e. within one and half months of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than two months 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. Further, 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 two months 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 NarsinghYadavvs 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) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 13 July, 2022

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