

**Reserved
Court No.1**

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

T.A. No. 10 of 2018

Tuesday, this the 26th day of March, 2019

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Shiv Shankar son of Shri Deen Dayal, R/o Village and Post-Bidhokar, District – Hamirpur.

.....Petitioner

Ld. Counsel for : **Shri Om Prakash Kushwaha, Advocate**
the Petitioner

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi.
2. The Officer in Commanding, Signal Abhilekh Karyalaya, Signal Records, Post Bag No.-5, Jabalpur- 482001.
3. Chief Controller of Defence Accounts (Pension), C.D.A. (Pension), Allahabad.

.....Respondents

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

ORDER

“(Per Hon'ble Mr Justice SVS Rathore, Member (J))”

1. This petition was initially filed in the Hon'ble Allahabad High Court, which has been received by transfer and registered as T.A. No.10 of 2018 in this Tribunal. In this petition the petitioner has prayed for the following reliefs:-

“(a) Issue a writ, order or direction in the nature of mandamus commanding the respondents to provide the Disability Pension to the petitioner alongwith back arrear and interest also.

(b) Issue a writ, order or direction in the nature of Certiorari commanding the respondents to quash the impugned order dt 24.12.1986 and 25.9.96 (Annexure-4 and 6 to this writ petition).

(c) Issue such other and further suitable writ, order or direction as this Hon’ble Court may deem fit and proper in the circumstances of the case.

(d) Award costs.”

2. The undisputed facts, as averred by the learned counsel for both the parties are that the petitioner was enrolled in the Indian Army on 20.11.1984 and was invalided out of service in low medical category ‘EEE’ under Army rule 13 (3) III (iv) on 11.05.1985 after rendering his total service of 165 days. The invaliding Medical Board (IMB) held on 08.03.1985 at Military Hospital Kirkee (Goa) assessed his disability at 40% (Permanent) i.e. for life for **‘SCHIZOPHRENIA (HEBEPRENIC) 295’** as neither attributable to nor aggravated by military service. The IMB also opined his disability as a result of constitutional disorder. The case for disability pension of the petitioner was rejected by Controller of Defence Accounts (P) Allahabad and communication to this effect was given vide letter dated 06.05.1986. The petitioner preferred appeal against the said order but the same was also rejected by Government of India and the petitioner was informed accordingly by letter dated 24.12.1986. Petitioner again sent petition on 25.02.1987 against rejection of disability pension to Signals Records and

the same was replied vide letter dated 07.03.1987 stating that his appeal has already been turned down vide letter dated 24.12.1986 by Government of India. Hence the petitioner has filed instant petition.

3. Learned counsel for the petitioner submitted that since the petitioner was enrolled in medically fit condition and thereafter he has been invalided out in Low Medical Category from army service, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension.

4. The respondents have filed counter affidavit denying the claim of the petitioner. While rebutting arguments of learned counsel for the petitioner, learned counsel for the respondents submitted that the petitioner was discharged from service in low medical category for '**SCHIZOPHRENIA (HEBEPRENIC) 295**', which was considered as neither attributable to nor aggravated by military service and rather it was constitutional in nature as opined by the IMB and as such, he has rightly been denied disability pension. Therefore it has been submitted that the petitioner is not entitled to disability pension in accordance with Para 173 of the Pension Regulations which clearly states that disability pension is admissible to an individual who is invalided out from service on account of disability, which is attributable to or aggravated by military service and is assessed at 20% or more.

5. We have heard Shri Om Prakash Kushwaha, Ld. Counsel for the petitioner and Shri Ashish Kumar Singh, Ld. Counsel for the respondents and perused the record.

6. We have perused the IMB carefully and noticed that the disease has started on the ninth day of enrolment i.e. 29.11.1984. When we go through the IMB opinion in this particular case for declaring the disease NANA we find that the IMB has given reasons that this disability of '**SCHIZOPHRENIA (HEBEPRENIC)**' is a result of constitutional disorder. The disability in question was found in the petitioner in the second week after enrolment. In such circumstances we are in agreement with the opinion of the IMB that the petitioner had this psychological problem before his enrolment in the Army. Therefore, by no stretch of imagination it can be said that a psychological disease which has manifested on the ninth day of joining training is attributable to or aggravated by military service.

7. Apart from it, in identical factual background Co-ordinate Bench of this Tribunal dismissed T.A. No. 1462/2010 **Bhartendu Kumar Dwivedi vs. Union of India and others** vide order dated 23.05.2000 wherein the applicant was enrolled on 21.01.2000 and was discharged on 27.04.2010 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 Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 preferred against the aforesaid order was dismissed on delay as well as on merits.

8. As a result of above discussions O.A. lacks merit and deserves to be rejected. Accordingly, the petition fails and is hereby **rejected**.

9. There shall be no order as to cost.

(Air Marshal BBP Sinha)
Member (A)

Dated: March , 2019

JPT

(Justice SVS Rathore)
Member (J)