

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 261 of 2018

Thursday, this the 25th day of March, 2021

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

Vikas Pandey S/O Sri Om Prakash Pandey, R/o Village Maheshpur-II, Post
Pakhanpura, P.S. Bhawarpur, District Ghazipur (UP).

.... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence,
Government of India, New Delhi.
2. Air Force Record Office (Dte of Air Veterans), Air Headquarters
Subroto Park, New Delhi-110010.
3. Deputy Controller of Defence Accounts (Air Force), New Delhi.

... Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal, Advocate**
Respondents. Senior Central Govt Counsel.

ORDER (Oral)

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

- (I) *This Hon'ble Tribunal graciously be please to quash the impugned order dated 06.11.2017 (Annexure no. A-3) passed by respondent no. 2 rejecting the first appeal filed by applicant.*
- (II) *This Hon'ble Tribunal graciously be please to direct the respondents to give disability pension along with its arrears and interest to the applicant w.e.f. 18.03.2016 towards his disability, '**UNSPECIFIED PSYCHOSIS @ 40% FOR LIFE (IN ROUNDING OFF 50%)**.*
- (III) *This Hon'ble Tribunal Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.*
- (iv) *Award costs to the applicant.*

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Air Force on 31.12.2014 and after having completed more than 01 year and 71 days of service, he was discharged from service under the clause 'On having been found medically unfit, invalided out from service in low medical category due to disability "**UNSPECIFIED PSYCHOSIS**' on 18.03.2016 (FN). Prior to discharge, it is stated that applicant underwent Invaliding Medical Board (IMB) which assessed his disability @ 40% for life neither attributable to nor aggravated by Air Force Services (NANA). Disability pension claim preferred by applicant was rejected vide order dated 23.03.2016. Thereafter, applicant submitted representation to the Chief of Air Staff on 02.11.2016 against rejection of disability pension claim. This being not decided, applicant had filed O.A. No. 226 of 2017 before this Hon'ble Tribunal which was disposed off vide order dated 04.07.2017 with a direction to respondents to

decide applicant's representation within three months. The representation was rejected vide order dated 06.11.2017. Hence, this O.A. has been filed by applicant for grant disability pension.

3. Ld. Counsel for the applicant submitted that applicant was enrolled in the Air Force in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore, any disability suffered by applicant after joining the service should be considered as either attributable to or aggravated by military service and he should be entitled to disability pension. Ld. Counsel for the applicant further submitted that disability pension claim of applicant has been rejected in a cavalier manner without assigning any meaningful reason. Further submission of Ld. Counsel for the applicant is that applicant, in February, 2016 while posted at Air Force Station, Jalahalli, was diagnosed to be suffering from '**UNSPECIFIED PSYCHOSIS**'. This disease he feels is due to stress and strain related to rigors of military service. The action of the respondents in not granting disability pension to the applicant is illegal. He pleaded that applicant's disability with which he suffered during service should be considered as aggravated by service and he should be entitled to get disability pension @ 40% duly rounded off to 50%.

4. On the other hand, learned counsel for the respondents submitted that since IMB has declared the applicant's disability as NANA, he is not entitled to disability pension. His further submission is that mental disorders are not detectable at the time of recruitment and therefore the competent authority has rightly rejected applicant's disability pension claim on the ground of disability being NANA. He pleaded for dismissal of O.A.

5. We have given our anxious consideration to the submissions of both sides and have carefully perused the records. From the record it transpires that medical documents are neither available with the applicant nor with the

respondents and in the absence of requisite medical documents, which are required to ascertain the cause of disability and its percentage and the reasons why the Medical Board considered the disease as neither attributable to nor aggravated by military service (NANA), we are unable to decide the case in absence of the report of Medical Board on this point. This O.A. cannot be decided in terms of the Hon'ble Apex Court judgments on the subject as the relevant medical documents, along with the opinion of Medical Board for declaring the disease as NANA, are not available. Hence relief claimed cannot be granted in vacuum.

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

7. No order as to costs.

8. Pending applications, if any, disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 25th March, 2021

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