

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 574 of 2020**

Monday, this the 05th day of April, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 15492648-N Ex. Rect. Yakoob Ali, S/o Habib Bax, R/o Jahar Nagar, Kursath, P.O. Kursath, Tehsil – Bilagram, District – Hardoi, U.P.-241126.

..... Applicant

Ld. Counsel for the Applicant : **Shri Dharam Raj Mishra**, Advocate
Shri J.N. Mishra, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110010.
2. The Chief of the Army Staff, IHQ MOD (Army), Army HQ, South Block, New Delhi.
3. The Officer-in-Charge Records, Armoured Corps, Pin-900476, C/o 56 APO.
4. PCDA (Pension), Draupadi Ghat, Prayagraj-211014.

.....**Respondents**

Ld. Counsel for the Respondents. : **Dr. Shailendra Sharma Atal**,
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.

- A. To issue/pass an order or direction to set-aside/quash the letter dated 09.03.2009 and rejection of disability claim by the First Appellate Committee on pension vide letter No.B/40502/1277/06/AG/PS-4 (Imp-II) dated 08.07.2007 and rejection of disability pension claim vide order dated 04.10.2005.
- B. To issue/pass an order or direction to the respondents to grant the disability element of disability pension to the applicant from date of discharge i.e. 18.11.2004.
- C. To issue/pass an order or direction to the respondents to grant “Rounding off” the disability pension from Date of discharge @20% to 50% in light of Apex Court case i.e. Union of India Versus Ram Avtar (supra).
- D. To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- E. To Allow this original application with costs.

2. Briefly stated facts of the case are that applicant was enrolled in Armoured Corps of Indian Army on 06.10.2003 and was invalided out from service on 18.11.2004 in Low Medical Category under Rule 13(3) Item IV of Army Rules, 1954. At the time of invaliding from service, the Invaliding Medical Board (IMB) held at Command Hospital (Southern Command), Pune on 13.09.2004 assessed his disability **'RECURRENT DEPRESSIVE DISORDER CURRENT EPISODE SEVERE DEPRESSIVE DISORDER WITH PSYCHOTIC SYMPTOMS (F-33.3)'** @30% for five years 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 25.08.2005 which was communicated to the applicant vide letter dated 04.10.2005. The applicant preferred First and Second Appeals which too were rejected vide letters dated 08.07.2007 and 09.03.2009 respectively. It is in this perspective that the applicant has preferred the present Original Application.

3. 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 of service conditions which may have led to occurrence of the disability. He further stressed that the Medical Board has also mentioned onset/origin of the disease during service/training, therefore, the disability should be accepted as attributable to military service. 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 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 30% for two years 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 01 year, 01 month and 13 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 respondents 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 06.10.2003, and the disease applicant was found to be suffering with in medical test first started on 29.06.2004, i.e. within nine months of joining the service.

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

8. Apart from, 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 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.

12. Pending applications, if any, are disposed of accordingly.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 05 April, 2021

AKD/-