

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 734 of 2021

Monday, this the 21st day of March, 2022

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

No. 14329700X Ex Gnr Ompal Singh, R/o Vill & Post – Ailum,
District- Shamli (U.P.).

.... **Applicant**

Ld. Counsel for the Applicant : **Shri KK Misra, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence,
Government of India, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Officer in Charge, Artillery Records, Nasik Road Camp.
4. Controller of Defence Account (Pension), PCDA (P)
Allahabad.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Rajesh Shukla,**
Central Govt Counsel.

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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). To quash CDA (P) Allahabad letter No G-3/9818/II/740 dated 12.03.1981 (Annexure A-2 to OA), and direct the respondents to grant 20% disability pension to the applicant duly rounded of to 50% as per his entitlement, along with its arrears with interest.
- (ii). Any other relief which the Hon’ble Tribunal may think just and proper may be granted to the applicant.
- (iii). Cost of the case may be awarded in favour of the applicant.

2. Rejoinder Affidavit filed by the applicant is taken on record.

3. Brief facts of the case are that applicant was enrolled in the Indian Army on 07.08.1977 and was invalided out of service w.e.f. 28.06.1980 in low medical category ‘EEE’ under Army Rule 13 (3) III (iii) due to disability “**Neurosis**”, assessed @ 20% and considered it neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide order 12.03.1981. Applicant wrote letter dated 15.03.1992 for grant of disability pension which was not replied by the respondents. Being aggrieved, applicant has filed this Original Application for grant of disability pension.

4. Learned counsel for the applicant submitted that applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that a person 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. In this regard, he submitted that for grant of disability pension the law is settled by the Hon'ble Apex Court in many cases and pleaded for disability to be considered as attributable to or aggravated by military service and accordingly, applicant be granted disability pension.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the army on 06.08.1977 and invalided out from service on 28.06.1980 due to disability '**NEUROSIS**'. Invaliding Medical Board held at Military Hospital Kirkee considered the disability of the applicant as neither attributable to nor aggravated by military service, hence in view of Rule 173 of Pension Regulation for the Army, 1961 (Part-1), the applicant is not entitled for disability pension. He pleaded for dismissal of O.A.

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

7. On careful perusal of the records and medical documents, it has emerged that applicant was enrolled on 06.08.1977 and the disease had first started/originated in July 1979 within two years of enrolment. After a detailed investigations by the classified specialist Psychiatrist,

the applicant was not found fit to continue in service being a case of 'NEUROSIS' and was recommended by the Invaliding Medical Board to be invalidated out of service in medical category 'EEE'.

8. 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.

9. 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 during 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 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,

