

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
CIRCUIT BENCH AT NANITAL**

**ORIGINAL APPLICATION No.1118 of 2023**

Wednesday, this the 13<sup>th</sup> day of March, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)  
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”**

No. 4105679N Rect. Mohit Rana S/o Atar Singh Rana, R/o T. Estte Banjarala, P.O. Bangarwala, Tehsil Raipur, District – Dehradun-248001 (Uttarakhand).

..... **Applicant**

Ld. Counsel for the Applicant : **Shri Kishore Rai**, Advocate

Versus

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-110001.
2. Adjutant General’s Branch, IHQ of MoD (Army), Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi-110001.
3. P.C.D.A. (P), Draupadighat, Allahabad, Uttar Pradesh.
4. Senior Record Officer, Records The Garhwal Rifles, PIN-900400, C/o 56 APO.

..... **Respondents**

Ld. Counsel for the Respondents. : **Shri Neeraj Upreti**, Advocate  
Central Govt. Standing Counsel

## ORDER

“Per Hon’ble Mr. Justice Anil Kumar, 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. A direction to quash the order dated 12.12.2022 passed by respondent no. 2 (contained as Annexure No. 5 to this original application) or to*
- ii. A direction to grant the disability pension to the applicant w.e.f. 14.11.2021 along with the rounding off to the tune of 50% or to*
- iii. To summon the entire records of the applicant pertaining to computation of his disability pension.*
- iv. Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.*

2. Briefly stated facts of the case are that applicant was enrolled in The Garhwal Rifles of Indian Army on 25.04.2021 and was invalided out from service on 14.11.2021 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, Lansdowne on 11.08.2021 assessed his disability **‘STRUCTURAL**

**EPILEPSY (ICD G40.4'** @30% 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 03.03.2022 which was communicated to the applicant vide letter dated 21.06.2022. The applicant preferred First Appeal which too was rejected vide letter dated 12.12.2022 which was communicated to the applicant vide letter dated 29.12.2022. 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 in terms of Regulation 179 of Pension Regulations for the Army, 1961 (Part-I). 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 25.04.2021, and the disease applicant was found to be suffering with in medical test first started on 14.05.2021, i.e. within one month of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than one month 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 one month 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 CfnNarsinghYadavvs 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 and 21 are 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.

(Maj. Gan. Sanjay Singh)  
Member (A)

(Justice Anil Kumar)  
Member (J)

Dated :13March, 2024

AKD/-