

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

**ORIGINAL APPLICATION No.287of 2023**

Friday, this the 15<sup>th</sup> day of March, 2024

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

No. 787961-S Ex. LAC (AFSO) Lalit Mohan Pant, S/o Sri Govind Ballabh Pant, R/o G.I.C. Road, Pandey Gaon, Pithoragarh, District Pithoragarh, through its Natural Guardian (Mother) Narmada Pant (Female), W/o Sri Govind Ballabh Pant, R/o G.I.C. Road, Pandey Gaon, Pithoragarh, District Pithoragarh.

..... **Applicant**

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

Versus

1. Union of India through Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi.
2. Chief Air Marshal, Air Headquarters (Vayu Bhawan), Motilal Nehru Marg, New Delhi-110106.
3. Director Pension/Policy, Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi.
4. Record Officer, Air Officer Commanding, 33 Wing, Air Force.
5. P.C.D.A.P. (Pension) (Air Force), Rajpur Road, Dehradun.

..... **Respondents**

Ld. Counsel for the Respondents. : **Shri Rajesh Sharma**, 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) *Humbly the petitioner/applicant seeks prayer to summon the entire service records, medical records qua the petitioner and to grant/sanction of disability pension as well as the service pension and emoluments to the petitioner/applicant with arrear immediately after the date of dismissal/discharge from Air Force i.e. 20.01.2015, otherwise petitioner shall suffer irreparable loss and injury.*

*Further, to direct the respondents to issue PPO to the petitioner within reasonable time period with arrears and interest 12% P.A. after the date of discharge/dismissal i.e. 20.01.2015 to the petitioner.*

(ii) *Such other suitable order be deemed fit and proper in the facts and circumstances of the case also kindly be pleased to meet in the interest of justice.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Air Force on 29.03.2005 and was discharged from service on disciplinary ground on 19.01.2015(AN) in Low Medical Category under clause

“Dismissal under Section 20(3) of Air Force Act, 1950 read with Rule 18 of Air Force Rules, 1969 after rendering 08 years and 285 days of service. At the time of discharge from service, the Release Medical Board (RMB) held at 33 Wing Air Force on 12.01.2015 assessed his disability **‘BIPOLAR AFFECTIVE DISORDER (Z-09.0)’**@40% 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 30.06.2015. 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 Air Force 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 discharged 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 RMB has opined the disability as NANA, hence in terms of Regulation 153 of Pension Regulations for the Indian Air Force, 1961 (Part-I), the applicant is not entitled for the grant of disability pension. 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 in the Indian Air Force on 29.03.2005, and the disease applicant was found to be suffering with in medical test first started in October, 2010, i.e. within six years of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than six years 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 RMB that the disease is NANA. In view of the foregoing and the fact that the disease manifested in less than six years of enrolment, we are in agreement with the opinion of RMB 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 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 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. Paras 21 and 47 of the Pension Regulations for the Army (Part-1), 2008 are reproduced:-

***"SERVICE WHICH QUALIFIES FOR PENSION AND GRATUITY IN RESPECT OF PERSONNEL BELOW OFFICER RANK***

***21. All service from the date of appointment or enrolment/transfer to man's service and any service rendered before attaining the age of 17 years, from the date of enrolment to the date of discharge shall qualify for pension and or gratuity with the **exception** of:***

- (i) any period of service on a temporary establishment or for which a special rate of pay is granted on the understanding that no pension is admissible,*
- (ii) any period of **unauthorised absence unless pay and allowances are admitted for the period of absence,***
- (iii) any period of absence without leave which is regularised as extra-ordinary leave without pay and allowances,*
- (iv) any period intervening between the date of dismissal/discharge/release and that of its cancellation which is regularised as extra-ordinary leave without pay and allowances,*
- (v) any period of absence as a prisoner of war, unless pay and allowances are admitted for the period of absence,*
- (vi) any period of detention in civil custody before being sentenced to imprisonment or fine, unless the President, as a special case, issues orders reducing the period that shall not count,*
- (vii) any period of imprisonment by sentence of a civil court or of a court martial.*

***MINIMUM QUALIFYING SERVICE FOR SERVICE PENSION***

***47. Unless otherwise provided for, the **minimum qualifying service for earning a service pension is 15 years.**"***

11. Since, the applicant has served only 09 years, 09 months and 19 days and therefore, applicant having not served 15 years of mandatory/qualifying pensionable service, is not entitled to service pension/pensionary benefits as per Para 21 and 47 of the Pension Regulations for the Army (Part-1), 2008.

12. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

13. No order as to costs.

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

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

(Justice Anil Kumar)  
Member (J)

Dated :15March, 2024

AKD/-