

Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL Application No 457 of 2021

Monday, this the 09th day of May, 2022

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

No. 7048242 Ex Cfn Mahak Singh Malik, S/o Late Suraj Mal,
Village & Post-Karoda Bania, Tehsil-Budhana, Distt-Muzaffar
Nagar (U.P.)-227776.

.....Applicant

Ld. Counsel for: **Shri Ashok Singh**, Advocate
the applicant **Shri Vikas Singh Chauhan**, Advocate

Versus

1. Union of India, through its secretary, Govt of India,
Ministry of Defence, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MoD (Army), DHQ, PO-
New Delhi-110011.
3. OIC, EME Records, Secunderabad (AP)-500015.
4. Principal Controller of Defence Account (pension),
Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the : **Shri Namit Sharma**, Advocate
Respondents Central Govt Counsel.

ORDER

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

- (i) *To quash/set aside the impugned order dated 29 Apr 2019 passed by the respondents No 3 which is annexed with compilation No 1 as an Annexure No A-1 to this present application and pass the appropriate order to the authority concerned to grant the disability pension alongwith all service consequential benefits including arrears w.e.f. the date of invalidated out from service at the rate of more than 50% for life by treating the attributable to military service.*
- (ii) *Issue an appropriate order or direction as this Hon'ble Tribunal may deem fit and proper in the demand of justice.*
- (iii) *Issue an order or direction awarding the cost of the application together with all legal expenses incurred by the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 15.11.1961 and was invalidated out from service in medical category 'EEE' on 04.06.1970 on account of disability 'Schizophrenia' after having completed 08 years, 06 months and 19 days service under Rule 13 (3) III (iii) of Army Rules, 1954 being medically unfit for further service. The records affirm that medical documents in respect of the applicant were destroyed in the year 1999 after stipulated retention period in terms of para 595 of Regulations for the Army, 1987. Disability pension claim was rejected vide order dated 30.08.1973 being disability neither attributable to nor aggravated by military service. Representation dated 28.02.2019 submitted by the applicant was replied vide letter dated 29.04.2019 intimating him that he is not entitled to disability pension. It appears that after having slept for over 49 years, the applicant has approached this Tribunal for grant of disability pension. Since payment of disability pension involves recurring

cause of action, the delay in filing Original Application was condoned vide order dated 22.09.2021. Hence this O.A.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Army in medically and physically fit condition and was invalided out of service in low medical category. It was further pleaded that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record in his service documents 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. Learned counsel for the applicant further submitted that the applicant is entitled to grant of disability pension as has been granted to others on the directions of various Courts/Tribunals.

4. On the other hand, Ld. Counsel for the respondents submitted that though the medical documents of the applicant are not available, however, from the records available, it appears that the disability pension claim was rejected by PCDA (P) Allahabad on 30.08.1973 as his disability was regarded as neither attributable to nor aggravated by military service (NANA). He further submitted that appeal preferred in this regard has also been rejected vide order dated 29.04.2019. The Ld. Counsel for the respondents further pleaded that in view of para 132 of Pension Regulations for the Army, 1961 (Part I), applicant is not entitled to disability pension as he has put in less than 10 years service. In regard to non availability of medical documents learned counsel for the respondents submitted that numerous petitions have been dismissed by Regional Benches and the Principal Bench on account of non availability of RMB/IMB. He pleaded for O.A. to be dismissed.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. The applicant was enrolled in the Army on 15.11.1961 and was invalided out of service on 04.06.1970 on account of 'Schizophrenia'. The material placed on record does not contain medical documents which are necessary for examination of certain factual position of the disease, the opinion of Medical Board for reasons declaring the disease as NANA, as well as percentage of the disability. The counter affidavit filed by the respondents also does not contain the medical documents. The respondents have stated during hearing that the medical documents of the petitioner have been destroyed as per rules and are not available. Therefore, neither the applicant nor the respondents have placed on record the medical documents i.e. IMB of the applicant. Thus, in the absence of medical documents no order can be passed by this Tribunal in vacuum since medical documents have already been destroyed in terms of para 595 of Regulations for the Army, 1987 as confirmed by the respondents in para 2 of the counter affidavit. We have perused para 595 of aforesaid regulation and we find that the medical documents in respect of non pensioner can be destroyed after 25 years.

7. We find that since the applicant was invalided out of service after completion of 08 years of service. The medical documents are not available and the opinion of the board on attributability/aggravation factor and percentage of disability cannot be ascertained. Therefore, in the present circumstances when medical documents have been destroyed, the applicant's entitlement to disability pension cannot be ascertained.

8. In view of the foregoing discussion, we are not in a position to presume that the disease of the applicant was either attributable to or aggravated by military service because of following reasons:-

(i) The IMB proceedings are not available and therefore the opinion of the medical board as to why the disease could not be detected at the time of enrolment cannot be ascertained to decide attributability.

(ii) The delay of over 49 years after discharge of the applicant is the primary reason for destruction and non availability of IMB proceedings.

9. Thus, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

11. Miscellaneous application(s), pending if any, stand disposed of accordingly.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated: 09.5.2022
rathore

(Justice Umesh Chandra Srivastava)
Member (J)