

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 872 of 2021

Thursday, this the 19th day of May, 2022

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

No. 3020234N, Ex. Sep. Kamal Kishore, S/o Sri Rajvir Singh, R/o Village – Udranpur, Lilapur, P.O. Harisinghpur, Tehsil – Amritpur, District – Farrukhabad (UP)-209622.

..... **Applicant**

Ld. Counsel for the : **Shri Manoj Kumar Awasthi**, Advocate
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of the Army Staff, IHQ of MoD (Army), Army HQ, South Block, New Delhi-110010.
3. The Officer-in-Charge, Records, Record Rajput Regiment, Fatehgarh (UP).
4. Principal Controller of Defence Accounts (P), Draupadighat, Prayagraj.

.....**Respondents**

Ld. Counsel for the : **Shri Alok Kumar Mishra** , Advocate
Respondents. 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 to set aside/quash the Appellate Authority order dated 21.07.2020, which is attached as Annexure No. 1.*
- B. *To issue/pass an order or directions to the respondents for grant of disability element of disability pension from the Invalid out dated 10.07.2019 from service.*
- C. *To issue/pass an order or directions to the respondents for grant of disability element of disability pension of the applicant 40% to round off 50% vide Govt. of India letter dated 31.01.2001 and also Hon'ble Apex court Judgment Union of India Vs Ram Avtar.*
- D. *To issue/pass an order or directions to the respondents for reinstate in service and provide the all consequential benefits.*
- E. *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.*

2. Briefly stated facts of the case are that applicant was enrolled in The Rajput Regiment of Indian Army on 20.06.2017 and was invalided out from service on 10.07.2019 (AN) in Low Medical Category under Rule 13 (3) Item III (iii) of the Army Rules, 1954. At the time of invalidation from service, the Invaliding Medical Board (IMB) held on 22.01.2019 assessed his disabilities (i) **'UNSPECIFIED NON ORGANIC PSYCHOSIS (F29)**

@40% for life and (ii) '**INTENTIONAL SELF POISONING BY AND EXPOSURE TO PESTICIDES (X68)**' @1-5% for life, **composite disabilities @40% for life**, and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 29.10.2019. The applicant preferred First Appeal which too was rejected vide letters dated 21.07.2020. The applicant preferred Second Appeal dated 02.07.2021 but of no avail. 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. He further accentuated that the applicant is not entitled to disability pension in terms of Regulation 81 (a) of the Pension Regulations for the Army, 2008 (Part-I), which stipulates that, "*Service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may, be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section.*" Accordingly, the applicant was informed about the rejection/non-entitlement of disability element. The Ld. Counsel for the respondents further submitted that claim for disability pension has rightly been rejected by the competent authority in view of Regulation 81(a) of Pension Regulations for the Army, 2008 (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 20.06.2017,

and the diseases applicant were found to be suffering with in medical test first started in June, 2018 during training period, i.e. within one year of joining the service.

7. In the above scenario, we are of the opinion that since the diseases have started in less than one year 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 diseases could not be detected at the time of enrolment. Since there is no causal connection between the diseases and military service, we are in agreement with the opinion of the IMB that the diseases are NANA. In view of the foregoing and the fact that the disease manifested in less than one year of enrolment, we are in agreement with the opinion of IMB that the diseases are 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 Yadavvs 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) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 19 May, 2022

AKD/-