

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 99 of 2021**Thursday, this the 28th day of April, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Ex No. 2143 LC Nira Chaudhary
Wife of Shri Sajal Kumar Singh
4/64, Raksha Puram, Meerut (UP)**.... Applicant**Ld. Counsel for the Applicant : **Shri Vinay Sharma** holding brief of
Col Y.R. Sharma (Retd), Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army staff, Army Headquarters, South Block, New Delhi – 110011.
3. Integrated HQ of MoD (Army), Adjutant General's Branch, Addl Dte Gen of Rtg (SE/WE), women Entry Section, West Block-III, RK Puram, New Delhi – 110066.
4. Additional Directorate General of Personnel Services/Adjutant General's Branch, IHQ of MoD (Army), DHQ PO, New Delhi – 110011.
5. Directorate General of Military Training/MT-6, General Staff Branch, Integrated HQ of MoD (Army), New Delhi-110011.

... RespondentsLd. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
Central Govt Counsel**ORDER**

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

- (a) Set aside the Additional Directorate General Personnel Service, Army HQ letter No. A/37071/GS/MT6/78/2013/AG/PS-4 (Imp-II) letter dated 17 April 2013, denying the claim of Ex Gratia payment (Annexure A-6).
- (b) Set aside the Additional Directorate General personnel Services (PS-4) (Imp-II) letter No. A/37071/GS/MT-6/68/2013/Appeal/AG/PS-4 (Imp-II) dated 04 Aug 2014, forwarded under RTI Cell Army HQ letter No. A/810027/RTI/24539 dated 02 Aug 2016, rejecting the first appeal claim of Ex Gratia Grant. (Annexure A-10).
- (c) Set aside the Additional Directorate General personnel Services, Army HQ letter No. B/38046A/150/2017/AG/PS-4 (2nd Appeal) dated 07 Sep 2018 rejecting the claim of disability pension and claim of Ex Gratia Payment. (Annexure A-12).
- (d) Set aside the IMB proceedings to the extent where the disabilities 1 and 2 have been held as Neither Attributable to Nor Aggravated by Military service and declare it as Attributable and Aggravated by military service.
- (e) Direct Respondent to pay the applicant :-
 - (i) Monthly Ex Gratia award @ of Rs. 9000.00 or as revised and applicable.
 - (ii) Monthly Ex Gratia award @ Rs. 9000.00 PM as revised.
 - (iii) Disability pension @ 50% with service element as applicable.
- (f) Allow the Original Application with costs.”

2. Brief facts of the case are that the applicant joined Officers Training Academy (OTA), Chennai on 05.04.2012 as Lady Cadet. The applicant was available for training only for very short duration of 19 days and she was continuously not available for training from 18.04.2012 to 19.11.2012. The applicant was invalided out from service in low medical category S-5 due to disabilities (1) **“PERSISTENT SOMATOFORM PAIN DISORDER”** @ 40% for life and (2) **“NON SUPPORTIVE OTTIS MEDIA (LT) WITH MILD HEARING IMPAIRMENT,**@ 6-10% for life which were considered as neither attributable to nor aggravated by military service. The disabilities of the applicant have no relation to service condition as per Para 54 & 57, Chapter VI of Guide to Medical Officers, 2008. Hence, based on the recommendations of IMB, the applicant was medically boarded out from training and she was invalided out of service w.e.f. 22.11.2012 (AN). The claim of the applicant for ex Gratia payment was rejected vide order dated 17.04.2013. First and second appeal of the applicant were also rejected vide order dated 04.08.2014 and 07.09.2018 respectively. Being aggrieved, applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that applicant applied for women entry of Short Service Commission (Technical) and at the time of medical board after Services Selection Board (SSB), she was declared temporary unfit for **CHRONIC OTTIS MEDIA (LT)** with mild hearing impairment. The applicant got herself operated for Chronic Ottis Media (LT) and was declared fit in

SHAPE-1 by the Army Medical Board. Thereafter, applicant joined Officers Training Academy (OTA), Chennai on 05.04.2012. In May 2012, due to pressure of military training, the applicant developed relapse of CHRONIC OTTIS MEDIA (LT) with mild hearing impairment and was treated first at MH Chennai and then at Command Hospital, Air Force, Bangalore and was placed in medical category H-2 (Temporary) on the recommendation of ENT Specialist. In June 2012, the applicant complained of pain in head, neck and ear and she was admitted in MH Chennai and was further transferred to Command Hospital, Air Force, Bangalore where she was diagnosed a case of **“PERSISTENT SOMATOFORM PAIN DISORDER”**. The applicant was placed in S-5 medical category and was recommended to be medically invalided out of service in low medical category S-5. The first disability **“PERSISTENT SOMATOFORM PAIN DISORDER”** was assessed @ 40% for life and second disability **“NON SUPPORTIVE OTTIS MEDIA (LT) WITH MILD HEARING IMPAIRMENT”** was assessed @ 10% and composite disability was assessed @ 50% for life and both were considered as neither attributable to nor aggravated by military service.

4. Learned counsel for the applicant further submitted that act of respondents was against para 423 of Regulations for Medical Services and numerous orders/judgments of Hon'ble Courts. The applicant was issued a Show Cause Notice on 11.08.2012 stating that she has been found unfit for further training due to her medical condition and the applicant shall be boarded out on approval of

Medical Board proceedings. The applicant was also advised to appeal against the findings of medical board, if she so wishes, to Chief of the Army Staff within 15 days, however, no appeal was filed. On 08.11.2012, medical board proceedings were approved by DGMS (Army) and based on the recommendations of medical board, the applicant was invalidated out from service on 22.11.2012. The applicant was informed by Army HQ vide letter dated 17.04.2013 that her claim for Ex Gratia stands rejected as her disabilities were NANA. The applicant submitted first appeal on 21.05.2013 to Appellate Committee requesting them to consider her case for grant of Ex Gratia. On 17.04.2015, having received no reply of her first appeal, applicant sent another letter to DGMT for grant of Ex Gratia on the basis of Hon'ble Apex Court judgment in the case of ***Union of India and others vs. Rajbir Singh***, Civil Appeal No. 2904 of 2011, decided on 13.02.2015. In Oct. 2016, the applicant submitted second appeal which was rejected by Second Appellate Committee vide letter dated 07.09.2018.

5. Learned counsel for the applicant further pleaded that applicant was under stress and strain of military training which may have led to occurrence of the injury. In this regard, he relied on the decision of the Hon'ble Supreme Court in the case of ***Dharamvir Singh v. Union of India and others***, Civil Appeal No. 4949 of 2013, decided on 02.07.2013, reported in **(2013) 7 SCC 316, Sukhvinder Singh vs. Union of India** in Civil Appeal No. 5605 of 2010, reported in 2014 STPL (WEB) 468 SC and pleaded that both disabilities to be

considered attributable to or aggravated by military service and applicant be paid disability pension and Ex Gratia accordingly.

6. On the other hand, Ld. Counsel for the respondents submitted that applicant was in some or other low medical category or was admitted at Military Hospital on various occasion w.e.f. 18.04.2012. The applicant was available for training only for very short duration of 19 days and she was not available for training continuously for 165 days from 18.04.2012 to 19.11.2012. Therefore, applicant's claim of alleged development of disability (hearing impairment) due to pressure of one month military training appears to be incorrect and unjustified. Cadets are neither subject to hard physical or mental toughness training nor put through weapon training during their initial phase of training in the junior terms. Gradual and easy start is given to all new cadets to enable them to develop their capability to withstand tough military training in later phases of their training. The applicant was admitted in Military Hospital, Chennai on 20.04.2012 for ear problem and further referred to Command Hospital (Air Force), Bangalore where she was diagnosed with (1) **"PERSISTENT SOMATOFORM PAIN DISORDER"** and (2) **"NON SUPPORTIVE OTTIS MEDIA (LT) WITH MILD HEARING IMPAIRMENT"**, and was placed in low medical category H2 (T-12) w.e.f. 07.05.2012. The Classified Specialist (Psychiatry), CHAF, Bangalore has mentioned in the medical case sheet dated 26.07.2012 that *"this 24 years old lady cadet with about 03 months training, is a case of Persistent Somatoform paid Disorder (F-45-4) who manifested with an insidious*

onset and gradual progression of pain in the neck, head and ears in the background of an aural surgery progressing to a state where she was unable to continue training”.

7. Learned counsel for the respondents further submitted that IMB assessed her disabilities (1) **“PERSISTENT SOMATOFORM PAIN DISORDER”** @ 40% for life and (2) **“NON SUPPORTIVE OTTIS MEDIA (LT) WITH MILD HEARING IMPAIRMENT,**@ 6-10% for life and considered both the disabilities as neither attributable to nor aggravated by military service. The first disability of the applicant has no relation to service condition as per Para 54, Chapter VI of Guide to Medical Officers, 2008 and second disability existed prior to recruitment as per Para 57, Chapter VI of GMO, 2008. Hence, based on the recommendations of IMB, the applicant was medically boarded out from training and was struck of strength w.e.f. 22.11.2012 (AN). The claim of the applicant for ex Gratia payment was rejected vide order dated 17.04.2013. First and second appeal of the applicant were also rejected vide order dated 04.08.2014 and 07.09.2018 respectively.

8. Learned counsel for the respondents further submitted that since the disabilities of the applicant have been held as neither attributable to nor aggravated by military service by the IMB, as such, applicant is not entitled for disability pension in terms of Para 54 and 57 of Chapter VI, Guide to Medical Officers, 2008. The applicant also does not fulfil the eligibility condition as laid down in Govt. of India, Ministry of Defence letter dated 16.04.1996 as amended vide Govt. of

India, Ministry of Defence letter dated 15.09.2003, therefore, her claim for Ex Gratia award stands rejected.

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

10. On careful perusal of the records and medical documents, it has emerged that applicant joined Officers Training Academy (OTA), Chennai on 05.04.2012 as Lady Cadet. The applicant was available for training only for very short duration of 19 days and she was not available for training continuously from 18.04.2012 to 19.11.2012. The applicant was invalided out from service in low medical category S-5 due to disabilities (1) **“PERSISTENT SOMATOFORM PAIN DISORDER”** @ 40% for life and (2) **“NON SUPPORTIVE OTTIS MEDIA (LT) WITH MILD HEARING IMPAIRMENT,**@ 6-10% for life which were considered as neither attributable to nor aggravated by military service. The disabilities of the applicant have no relation to service condition as per Para 54 & 57, Chapter VI of Guide to Medical Officers, 2008. Hence, based on the recommendations of IMB, the applicant was medically boarded out from training and she was invalided out of service w.e.f. 22.11.2012 (AN).

11. Further, the Appellate Committee has also examined applicant's claim for grant of disability pension and Ex Gratia in the light of relevant rules and policy letters and finally rejected being neither attributable to nor aggravated by military service. We are in agreement with the opinion of IMB proceedings and Appellate Committee. Additionally, a Cadet is akin to a probationer and hence

prima facie the respondents as an employer have a right to discharge a Cadet who is not meeting the medical standards required for military training/service. In view of the foregoing, we are in agreement with the opinion of IMB that the applicant's disability is neither attributable to nor aggravated by military service and hence, she is not entitled to disability pension and Ex Gratia.

12. 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.

13. 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 (in this case after about 15 days of initial training in OTA) 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, 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. 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.”

14. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

15. No order as to costs.

16. Pending Misc. Application(s), if any, shall stand disposed of.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: April, 2022

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