COURT No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION No. 28 of 2017.

Friday, this the 20th day of May, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt. Rajesh Tyagi, Widow of Vishwanath Tyagi, R/o Town - Kharkhauda, District - Meerut.

…..... Applicant

Learned counsel for the Petitioner :**Shri Dinesh Kumar, Advocate**.

Versus

1. Union of India through Secretary Ministry of Defence, Po- New Delhi 110011.

2. Officer in Charge (Records) E.M.E Sikandarabad.

.....Respondents

Learned counsel for the Respondents. : **Shri Namit Sharma, Central Govt. Counsel**

ORDER

"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"

1. This Writ Petition No 21635 of 2017 has been received by this Tribunal by way of transfer under Section 34 of the Armed Forces Tribunal Act, from Hon'ble High Court of Judicature at Allahabad and renumbered as Transferred Application No. 28 of 2017.

2. By means of the instant T.A., the petitioner had made the following prayers:-

> *(i) Issue an order or directions directing the respondent to comply with the order dated 28.01.2008 passed by Hon'ble High Court in CM<WP No 36014/1996, Smt Rajesh Tyagi Vs Union of India.*
>
> *(ii) Issue an order directing the respondent No 2 to give the family pension to the petitioner.*
>
> *(iii) Issue any other order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.*
>
> *(iv) Award the cost against contesting respondents.*

3. Brief facts of the case giving rise to this petition are that husband of the petitioner Viswanath Tyagi was enrolled in the Indian Army on 02.08.1973 and was invalided out from service on 25.06.1983 after rendering 9 years, 10 months and 23 days of service in low medical category 'EEE' having been found medically

unfit for further service due to disability ‘DEPRESSION {ICD-311}’ under item III (iii) of table annexed to Rule 13 (3) of Army Rules 1954. Husband of the applicant died on 25.01.1988. Disability of husband of the applicant was considered as neither attributable to nor aggravated by military service. After death of her husband, applicant applied for grant of family pension which was not accepted. Applicant files Writ Petition No 36104 of 1996 before Hon’ble High Court of Judicature at Allahabad which was disposed of vide order dated 28.01.2008 with directions to respondents to decide the case of the petitioner within 3 months from the date of production of the certified copy. Applicant submitted representation for grant of family pension which was rejected. Being aggrieved, applicant has filed instant T.A. for grant of family pension.

4. Learned counsel for the applicant submitted that husband of the applicant was enrolled in the Army in medically and physically fit condition and there was no note in his service documents with regard to suffering from any disease prior to enrolment, therefore, any disability suffered by the husband of the applicant after joining the service should be considered as attributable to or aggravated by military service and the husband of the applicant should be entitled to disability pension. Learned counsel for the applicant

further submitted that applicant is a poor lady having no means of livelihood and having five daughters, hence her case for grant of family pension should be considered sympathetically on humanitarian grounds. Claim of the husband of the applicant was rejected in a cavalier manner without assigning any meaningful reason and without considering length of service of her husband. Further submission of learned counsel for the applicant is that since the aforesaid disease occurred due to stress and strain related rigors of military service of more than 9 years, this should be considered either attributable to or aggravated by military service and applicant should be granted family pension.

5. 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 husband of the applicant is not entitled to disability pension in terms of Rule 173 of Pensions Regulations for the Army, 1961 (Part-I), which stipulates that, “unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over, but in the instant case the disability of husband of the applicant was considered as NANA, therefore, the

applicant is not entitled to disability pension. Ld. Counsel for the respondents further submitted that claim for disability pension to husband of the applicant has rightly been rejected by the competent authority in view of para 198 of Pension Regulations for the Army, 1961 (Part-I), which categorically states that the minimum period of qualifying service actually rendered and required for grant of invalid pension is ten years, but in the instant case the applicant has put in only 09 years, 10 months and 23 days of service.

6. Learned counsel for the respondents further submitted that husband of the applicant submitted petition dated 18.03.1987 for grant of invalid pension which was suitably replied by the respondents vide letter dated 30.04.1987. Applicant (widow of the deceased soldier) submitted petition dated 08.10.1991 for grant of family pension informing that her husband had died on 25.01.1988. She was informed vide letter dated 15.11.1991 that since the deceased soldier was not in receipt of any pension at the time of his death, his NOK is also not eligible for family pension as per existing rules.

7. The applicant thereafter, filed CMWP No 36104 of 1996 before Hon'ble High Court of Judicature at Allahabad for grant of family pension. An order dated 28.01.2008 was passed in the said

CMWP by the Hon'ble Court directing respondents to decide the representation of the applicant by a reasoned and speaking order stating the reasons for refusal of the family pension to the applicant. Respondent No 2, EME Records decided the representation of the petitioner vide order dated 10.06.2008 by a reasoned and speaking order stating that since the ex serviceman was not in receipt of any type of pension, his NOK was also not entitled to family pension.

8. Now the applicant has filed instant TA for grant of family pension. The husband of the applicant was not in receipt of any kind of pension at the time of his death, hence the applicant is also not entitled for grant of family pension. He pleaded that in the facts and circumstances, as stated above, Transferred Application has no substance and is liable to be dismissed.

9. Heard the Learned counsel for the parties and perused the material placed on record. The question before us to decide is whether applicant is entitled for grant of family pension?

10. Para 212 of Pension Regulations for the Army, 1961 (Part-1), deals with conditions for grant of ordinary family pension, which reads as under:-

2. ***Ordinary Family Pension to Whom Admissible.*** *When an individual dies on account of causes, which are neither attributable to nor aggravated by military service:-*

(i) either while in service provided he had been found fit after successful completion of the requisite training and medical examination for commission or at the time of enrolment in the case of personnel below officer rank.

(ii) or after retirement/discharge from services and was on the date of death in receipt of or eligible for retiring/special/ reservists/disability/invalidment/ war injury pension.

(iii) xxxx xxxxx

11. It is well known that mental disorders can escape detection at the time of enrolment, hence benefit of doubt cannot be given to husband of 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.

12. Apart from, 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.

13. 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 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."*

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

15. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) **Member** (J)

Dated: 20 May, 2022
UKT/-