

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

**O. A. No. 10 of 2020 with M.A. No 756 of 2019**

**Tuesday this the 05<sup>th</sup> day of October, 2021**

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

Smt Sughar Shree (W/o No.8027058-N Pnr (Late) Vrij Kishore), R/o Village TARMAI, Post: DAKHINARA, Tehsil: SHIKOHABAD, Dist: Ferozabad (U.P)-205135

..... Applicant

Ld. Counsel for the Applicant : **Shri Shailendra Kumar Singh,**  
**Advocate**

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi -110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence, South Block, New Delhi-110011.
3. Addl. Dte Gen of MP –MP-8(I of R), Adjutant General's Branch, IHQ of MoD (Army), West Block –III, RK Puram, New Delhi-110066.
4. OIC Records, THE PIONEER CORPS, PIN: 900493, C/o A.P.O
5. PCDA(P)(Army), Draupadi Ghat, Allahabad (UP)-211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Amit Jaiswal,**  
**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 quash or set aside the Respondent letter dated 24 Apr 2019 (Annexure A-1 & Impugned Order).*

*(B). To issue suitable directions/ instructions to Respondents to grant the FAMILY PENSION / CONSEQUENTIAL BENEFITS in favour of the applicant with effect from 06.06.1987 (date of death of applicant’s husband) and to pay arrears accrued thereof along with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.*

*(C). Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Being pensionary matter, delay in filing the Original Application is condoned. M.A. No 756 of 2019 is disposed of accordingly.

3. Facts giving rise to Original Application in brief are that husband of applicant Ex Late Pnr Vrij Kishore was enrolled in the Army on 16.01.1980 and was invalided out from service

with effect from 04.06.1987 in low medical category 'EEE' under Army Rule 13 (3) III (iii) for the disease '**SCHEZOPHRENIA**'. Her claim for grant of family pension was rejected. She filed mercy petition for grant of family pension which was also rejected by the respondents vide letter dated 24.04.2019. Being aggrieved, the applicant has filed instant O.A. for grant of family pension.

4. Learned counsel for the applicant submitted that husband of the applicant was brought home by two Escorts in severely sick condition on 04.06.1987 and died on 05.06.1987. The cremation and last rites was completed in the presence of said escorts. Invaliding Medical Board proceeding was not given to applicant by army authorities, hence applicant was not aware the real cause of death of her husband. PPO No F/NA/2727/1988 dated 09 Jun 1988 was issued wherein applicant was granted DCRG amount of Rs. 5687/-. Her claim for grant of disability pension was rejected vide letter dated 09.12.1987. Applicant filed Mercy Petition against rejection of disability pension to Records Office for grant of family pension. She was informed by the respondents vide letter dated 24.04.2019 that her Mercy Petition for grant of Family Pension has been rejected. Learned counsel for the applicant submitted

that husband of the applicant was enrolled in the army in medically fit condition and, thereafter, he was discharged from service in Low Medical Category. He submitted that disability of the husband of the applicant to be considered as a result of stress and strain of military service. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such, the husband of the applicant is entitled to disability pension as well as applicant is entitled for granted family pension.

5. Per contra, learned counsel for the respondents submitted that husband of the applicant was admitted in Military Hospital Agra on 01.12.1985 while on Annual Leave. He was transferred to Command Hospital, Central Command on 16.12.1985. He was diagnosed with disease '**SCHEZOPHRENIA**'. On 03.06.1987, husband of the applicant was again admitted in Military Hospital, Jodhpur and invalided out from service with effect from 04.06.1987 in low medical category 'EEE' and his disability was found not attributable to military service and opined that disease 'Psychiatric disorder' was not connected to military service. The husband of the applicant was dispatched to his home address along with two escorts and died on 05.06.1987. His claim for grant of disability

pension was rejected by PCDA vide letter dated 02.11.1987 stating that the disability for which above named individual was invalidated out was found not attributable to military service. Applicant was granted Death benefits, Death cum retirement gratuity, Financial assistance, Army Group Insurance Fund and Armed Forces Pension Provident Fund. She was informed that disability pension cannot be granted to her husband as disease from which husband of the applicant suffered was found not attributable to military service. Since her husband was not granted any pension, hence she is also not entitled for grant of family pension. He pleaded that in view of the facts and legal position the Original Application is misconceived and devoid of merits as such liable to be dismissed.

6. Heard learned counsel for the parties and perused the documents available on record.

7. Graded Specialist psychiatric has opined that 'in view of the psychiatric nature of illness which has relapsed, he is unlikely to remain a fit and useful soldier'.

8. 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 IMB that the disease is NANA.

9. Apart from, in similar factual background a Regional Bench of Armed Forces 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.

10. 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.”*

11. In the instant case, Medical Board concluded that the disability is neither attributed to army service nor aggravated by military service though it assessed the disability at 20% for two years. Such opinion of the Medical Board was the basis of the discharge of the applicant.

12. The Guide to Medical Officers (Military Pensions), 2002 — “Entitlement: General Principles” has mentioned following

diseases in para 27 of the judgment, which ordinarily escape detection at the time of enrolment:

- “(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,*
- (b) Certain familial and hereditary diseases e.g. Haemophilia, Congenital Syphilis, Haemoglobinopathy.*
- (c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.*
- (d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.*
- (e) Relapsing forms of mental disorders which have intervals of normality.*
- (f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.”*

*(Emphasis Supplied)*

13. We have also extracted the relevant provisions from the 1982 Rules, which read as under:-

*“5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:*

***Prior to and during service***

*(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.*

*(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service.*

xx xx xx

**9. Onus of proof.**—*The claimant shall not be called upon to prove the conditions of entitlements. He/She will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.*

xx xx xx

**14. Diseases.**—*In respect of diseases, the following rules will be observed—*

*(a) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease will fall for acceptance on the basis of aggravation.*

*(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.*

*(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.”*

14. The Rule 14, as reproduced above, was amended vide Government of India, Ministry of Defence letter No. 1(1)/81/D(Pen-C) dated 20th June, 1996. The amended Clauses read as follows:

*"Rule 14 (a)- For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:*

*(i) That the disease has arisen during the period of military service, and*

*(ii) That the disease has been caused by the conditions of employment in military service.*

1. *(b) If medical authority holds, for reasons to be stated, that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the military service did not contribute to the onset or adversely affect the course disease, entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service.*

2. *(c) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.*

3. *(d) In case of congenital, hereditary, degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military services."*

15. In ***Rajbir Singh***, the Hon'ble Apex Court held that the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is initial presumption that the respondents were

all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service. The Court held as under:

*“9. As regards diseases Rule 14 of the Entitlement Rules stipulates that in the case of a disease which has led to an individual's discharge or death, the disease shall be deemed to have arisen in service, if no note of it was made at the time of individual's acceptance for military service, subject to the 8 condition that if medical opinion holds for reasons to be stated that the “disease could not have been detected on medical examination prior to acceptance for service, the same will not be deemed to have so arisen”. .....*

*xx xx xx*

*14. The legal position as stated in Dharamvir Singh case [Dharamvir Singh v. Union of India, (2013) 7 SCC 316 : (2013) 2 SCC (L&S) 706] is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service.*

*xx xx xx*

*16. Applying the above parameters to the cases at hand, we are of the view that each one of the respondents having been discharged from service on account of medical disease/disability, the disability*

*must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service thus remains unrebutted. Since the disability has in each case been assessed at more than 20%, their claim to disability pension could not have been repudiated by the appellants.”*

16. Hon'ble Apex Court in ***Veer Pal Singh Vs Secretary, Min of Def***, rejected the opinion of invaliding Medical Board but directed the respondents to refer the case to Review Medical Board to reassess the medical condition of the applicant and to find out whether at the time of discharge from service, he was suffering from disease which made him unfit to continue in service. In the aforesaid case, the Court referred the matter to the Review Medical Board in view of the fact that Psychiatrist has noted that the applicant has improved with treatment. The Court referred to Merriam Webster Dictionary; Report of National Institute of Mental Health, USA; Modi's Medical Jurisprudence and Toxicology; and the book titled 'The Theory and Practice of Psychiatry' authored by F.C. Redlich and Daniel

X. Freedman, to hold that the observations made by Psychiatrist was substantially incompatible with the existing literature on the subject.

17. However, in the present case, we find that there is no such infirmity in the report of the Medical Board which may warrant reconsideration of the physical condition and the extent of disability by the Review Medical Board.

18. We find that it is not mechanical application of the principle that any disorder not mentioned at the time of enrolment is presumed to be attributed to or aggravated by military service. The question is as to whether the person was posted in harsh and adverse conditions which led to mental imbalance.

19. Annexure I to Chapter IV of the ***Guide to Medical Officers (Military Pensions), 2002 — “Entitlement: General Principles”*** points out that certain diseases which may be undetectable by physical examination on enrolment including the Mental Disorders; Epilepsy and Relapsing forms of mental disorders which have intervals of normality, unless adequate history is given at the time by the member. ***The Entitlement Rules*** itself provide that certain diseases ordinarily escape

detection including Epilepsy and Mental Disorder, therefore, we are unable to agree that mere fact that Catatonic Schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease was aggravated or attributable to military service.

20. The 1982 Rules classify the diseases which are affected by climatic conditions, stress and strain and dietary complications. The stress and strain cause the following injuries as per the said classification of diseases:

- “(a) Psychosis and psychoneurosis.*
- (b) Bronchial Asthma.*
- (c) Myocardial infarction, and other forms of IHD.*
- (d) Peptic ulcer.”*

21. Therefore, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to Psychosis and psychoneurosis. Relapsing forms of mental disorders which have intervals of normality and Epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member.

22. The applicant was a young boy of about 20 years at the time of enrolment and had been boarded within 7 years of his service. Even if he was suffering from any mental disorder prior

to enrolment, the same could not be detected at the time of enrolment. Due to disease applicant was found unsuitable for further service. Neither the nature of job nor the place of posting was such which could have caused stress and strain leading to disability as attributed to or aggravated by military service.

23. 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 Schizophrenia is presumed to be attributed to or aggravated by military service.

24. 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 applicant 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.

25. In view of the above, we do not find any merit in the present Original Application, accordingly, the same is **dismissed**.

26. No order as to costs.

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

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

Dated: 05 October, 2021

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