

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 413 of 2023**Tuesday, this the 03rd day of October, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 15782344F Ex. Hav. Sharad Kumar S/o Santosh Kumar, R/o Village – Raipur, Post – Allampur Geriya, Tehsil – Khaga, District - Fatehpur (UP)-212655.

..... ApplicantLd. Counsel for the Applicant : **Shri Rahul Pal**, Advocate

Versus

1. Union of India through The Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ PO, New Delhi-110011.
3. Officer Incharge, Sena Vayu Raksha Abhilekh, Army Air Defence Records, PIN-908803, C/o 99 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj, Uttar Pradesh-211014.

..... RespondentsLd. Counsel for the Respondents. : **Shri Avind Kumar Pandey**, Advocate
Central Govt. Counsel**ORDER****“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, 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 or directions to the opposite parties to grant disability element of disability pension @30% to @50% to the applicant from the next date of his superannuation i.e. 01.05.2022 along with 12% interest on arrear in the light of Judgment passed by the Hon'ble Apex Court and Government letter dated 31.01.2001.*
- B. *To issue/pass any other order or direction as this Hon'ble Tribunal may deemed just, fit and proper under the circumstances of the case in the favour of the applicant.*
- C. *To award the cost of the case in favour of the applicant from the opposite parties.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 15.05.2003 and was discharged from service on 30.04.2022 (AN) in Low Medical Category, being unwilling to continue further in service, under Rule 13 (3) Item III (i) (a) (O) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Mathura on 01.02.2022 assessed his disability '**SEIZURE DISORDER (G 40.9)**' @30% for life and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated

02.05.2022. The applicant preferred First Appeal which too was rejected vide letter dated 20.12.2022 which was communicated to the applicant vide letter dated 06.01.2023. 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 discharged 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 RMB 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 element of disability pension in terms of Rule 6, 10 and 11 of the Entitlement Rules for Casualty Pensionary Award to Armed Force Personnel-2008 read in conjunction

with Para 33, Chapter VI of Guide to Medical Officer, 2002 (Amendment 2008). He further submitted that on 11.10.2005 the applicant was downgraded to Low Medical Category for diagnosis "SOLITARY SEIZURE" for the period of six months with effect from 11.10.2005. On review, he was upgraded for the period of six months with effect from 03.04.2006. On further review, the applicant was upgraded to permanent low medical category for diagnosis "GENERALIZED SEIZURE" for the period of two years with effect from 12.09.2006. Since the applicant was placed in permanent low medical category and to retain him in service, it was necessary to grant his shelter appointment subject to availability of suitable appointment. As the applicant was willing to continue further service in alternative appointment, his retention was recommended by the then Commanding Officer of the Unit with effect from 12.09.2006. On further review, the applicant continued in low medical category for diagnosis "SEIZURE DISORDER (G 40.9)" for two years from 05.02.2021 to 05.02.2023 and he was unwilling to continue further service in alternative appointment, his retention was not recommended by the then Commanding Officer with effect from 05.02.2021. 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 15.05.2003, and the disease applicant was found to be suffering with in medical test first started on 29.09.2005, i.e. two and half years of joining the service, although, the applicant claims intermittent episodes of seizure recurrence despite good drug compliance as mentioned in Specialist opinion dated 19.01.2022.

7. In the above scenario, we are of the opinion that since the disease has started in less than two and half years 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 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 RMB that the disease is NANA. In view of the foregoing and the fact that the disease manifested in less than two and half years of enrolment, we are in agreement with the opinion of RMB that the disease is 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 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 and 21 are 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 Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 03 October, 2023

AKD/-