

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

**Reserved
Court No. 2**

Original Application No. 215 of 2015

Thursday, this the 24th day of August, 2017

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal Anil Chopra, Member (A)”**

Omkar Nath Sharma (No 18008457L Ex Recruit), S/o Shri Rajendra Sharma, R/O Village & Post : Satramganj Bazar (Seorai), Tehsil : Jamaniya, District : Ghazipur, State-Uttar Pradesh.

-Applicant

Ld Counsel for the applicant **-Shri R. Chandra,
Advocate.**

Versus

1. Union of India, through, The Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence, (Army) DHQ Post Office New Delhi.
3. The Officer-in-Charge, Bengal Engineer Group Records, PIN-908779, C/O 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

Ld. Counsel for the respondents **- Shri Shyam Singh,
Advocate.**

OIC Legal Cell **- Maj Salen Xaxa.**

ORDER

“Per Hon’ble Air Marshal Anil Chopra, Member (A)”

1. The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with denial of disability pension.
2. We have heard Ld. Counsel for the parties and perused the records.
3. Brief facts, as borne out from the record are that the applicant was enrolled in the Indian Army in Bengal Engineering Group as Soldier Clk/Store Keeper (Technical) on 30.01.2012. On 10.02.2012 the applicant was admitted to Military Hospital Roorkee with complaints of abnormal behaviour, anxiety attacks and remaining aloof. He was transferred to Military Hospital Meerut where he was medically diagnosed to be suffering from **Other Non Organic Psychosis** and was placed in low medical category. The Invaliding Medical Board recommended the applicant to be invalided out of service in medical category S5H1A1P1E1. In the opinion, the disability of the applicant was found to be neither attributable nor aggravated by military service. The Invaliding Medical Board (AFMSF-16) in its opinion dated 17.04.2012 (in medical case sheet-AFMSF-7A) mentioned that the applicant is said to have stated that he was treated at BHU for mental illness but later withdrew the statement, possibly in an attempt to save his job. The Medical Board further mentioned, “Past history of being treated at BHU for mental illness before joining service.” The composite assessment of

disability of the applicant was found to be 40% for life. However net assessment qualifying for disability pension was found to be nil. The Medical Board recommended to be invalided out of service. As mentioned above the Medical Board opined that the disability (Other Non Organic Psychosis) was neither attributable to nor aggravated by military service. In the column, "Reason/cause/specific condition, the Medical Board mentioned, "onset in peace. Disability existed before joining service." Accordingly the applicant was invalided out of service on 17.05.2012 sans disability pension. The applicant preferred first appeal against non grant of disability pension on 02.02.2013 which was rejected on 07.07.2014. The second appeal preferred by the applicant also met the same fate and was rejected by the competent authority on 31.07.2015 on the ground that the applicant was in peace area hence there was no close association with Field/High Altitude/Counter Insurgency Operations.

4. Ld. Counsel for the applicant submitted that the Invaliding Medical Board has not specifically mentioned in its report that the disease could not be detected on medical examination prior to acceptance in service, as such, the opinion of the Invaliding Medical Board suffers from vice of arbitrariness inasmuch as it has recorded opinion that the disability was neither attributable to nor aggravated by military service. It was further submitted that while rejecting the first and second appeals of the applicant, the appellate authorities did not get the applicant medically examined as such order of rejection of his appeals are bad in the eyes of law and liable to be set aside. Ld. Counsel for the applicant cited the Hon'ble Supreme

Court decision in the case of ***Union of India & Ors vs. Manjeet Singh*** rendered in Civil Appeal Nos. 4357- 4358 of 2015 arising out of SLP (Civil) Nos. 13732-13733/2017. In the case of ***Union of India & Ors vs. Manjeet Singh*** (supra), their Lordships have observed, to quote:-

“22. Be that as it may, adverting inter alia to Rule 14(b) of the Rules, we are of the unhesitant opinion that reasons, that the diseases could not be detected on medical examination prior to acceptance in service, ought to have been obligatory recorded by the Medical Board sans whereof, the respondent would be entitled to the benefit of the statutory inference that the same had been contracted during service or have been aggravated thereby. There is no reason forthcoming in the proceedings of the Medical Board, as to why his disabilities eventually adjusted to be constitutional or genetic in nature had escaped the notice of the authorities concerned at the time of his acceptance in the Army service. ...”

5. Repelling contention of Ld. Counsel for the applicant, Ld. Counsel for the respondents submitted that para 173 of the Pension Regulations for the Army, 1961 (Part-1) provides with regard to disability pension consisting of service elements. For convenience sake para 173 of the Pension Regulations for the Army is reproduced as under:-

“173. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rules in Appendix II.”

6. Referring to Appendix II to Regulation 173 which contains classification of diseases for which a person may be granted disability pension, Ld. Counsel for the respondents stated that the applicant suffered from disease Other Non Organic Psychosis which is caused

on account of stress and strain. In paragraph 13 of the counter affidavit the respondents have specifically stated that after eleven days of his enrolment in the Army, when the basic military training was yet to commence, the applicant was admitted in the Military Hospital Roorkee on 10.02.2012 with complaints of abnormal behaviour, anxiety attacks and remaining aloof. Ld. Counsel for the respondents submitted that the Medical Board in its opinion dated 17.04.2012 has mentioned that there was past history of the applicant being treated in BHU for mental illness before joining the Army service. The applicant in his rejoinder affidavit has not denied the above specific averment of the respondents.

7. We are in respectful agreement with the observations made by the Hon'ble Supreme Court in the case of ***Union of India & Ors vs. Manjit Singh*** (supra) but the fact remains that the Invaliding Medical Board has opined that the applicant was under treatment at the BHU for mental illness before joining Army service. The uncontroverted averment made in para 13 of the counter affidavit makes it clear that immediately after recruitment in the Army complaints were made with regard to the mental condition of the applicant on account of which he was hospitalised and was found to be suffering from Other Non Organic Psychosis. The Medical Board opined that the disease suffered by the applicant was neither attributable to nor aggravated by the military service. The net assessment qualifying for disability pension was assessed as Nil and the applicant was medically advised to be invalided out of service in low medical category. The Medical Board in unequivocal terms has mentioned in its medical

opinion dated 17.04.2012 that the disability existed before joining Army service. Thus since the disease was suffered by the applicant prior to joining the Army service, it cannot be said to be attributable to or aggravated by the military service.

8. Thus the applicant is not entitled for disability pension and it has rightly been denied to him by the respondents. The first and second appeals of the applicant have also been rightly rejected and no exception can be had to it.

9. There is no merit in the O.A. which deserves to be rejected.

10. It is accordingly **dismissed**.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: August, , 2017
Rathore