

**RESERVED**  
**COURT NO 1**

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

**ORIGINAL APPLICATION No. 620 OF 2017**

Monday, this the 30<sup>th</sup> day of September, 2019

**"Hon'ble Mr. Justice Virendra Singh, Chairperson**  
**Hon'ble Air Marshal BBP Sinha, Member (A)"**

Sushil Kumar (No 6945131-Y Ex Recruit/SHGD), S/O Shri Rajendra Singh, R/O Village-Shekhpur, Post-Shikarpur, District-Bulandshahar, State-Uttar Pradesh.

.....Applicant

Ld. Counsel for: **Shri R. Chandra**, Advocate  
the Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ, PO-New Delhi-11.
3. The Officer-in-charge, Army Ordnance Corps Records, PIN-0900453, C/O 56 APO.
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

.....Respondents

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

**ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. Being aggrieved by denial of disability pension, the applicant has filed the present Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 wherein he has sought the following reliefs:-

- (a) *The Hon’ble Tribunal may be pleased to set aside the order dated 30.03.2016 (Annexure A-1).*
- (b) *The Hon’ble Tribunal may be pleased to set aside the finding of the Invaliding Medical Board holding the disability as neither attributable to nor aggravated by military service.*
- (c) *Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 25.05.2003 to 25.05.2008 (for five years) along with the interest at the rate of 24% per annum.*
- (d) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 12 years, 08 months and 07 days. Since payment of disability pension involves recurring cause of action, the delay was condoned vide order dated 07.12.2017.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 18.10.2002 and was invalided out of service w.e.f. 24.05.2003 (AN) in low medical category ‘S5H1A1P1E1’ due to ‘Schizophrenia-295, F 20.0’ having rendered only 07 months and 07 days

of service. The Invaliding Medical Board (IMB) of the applicant was held on 24.04.2003 at Military Hospital, Secunderabad. The IMB Proceedings has assessed his disability @ 40% for five years neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide order dated 05.07.2004. Instead of submitting an appeal within stipulated period, the applicant had filed Writ Petition No 35568 of 2009 before the Hon'ble High Court, Allahabad seeking a mandamus for re-instatement into service on the ground that he was incorrectly discharged and he should be taken back in service. The Hon'ble High Court vide its order dated 22.07.2009 had disposed off the aforesaid Writ Petition directing the applicant to approach the appropriate forum in terms of decision in the case of ***Rajendra Kumar Mishra vs Union of India & Ors***, reported in (2005) 1 UPLGEC 108. After elapse of more than 06 years the applicant had visited Army Ordnance Corps Centre (AOC), Secunderabad and submitted his application dated 31.03.2016 for grant of disability pension. The AOC Centre had replied his application vide letter dated 31.03.2009 stating therein that he was invalided out of service w.e.f. 24.05.2003 (AN) under Army Rule 13 (3) (iv) on account of disease

'Schizophrenia' which was opined by the medical authorities as NANA. It is in this perspective that this O.A. has been filed.

4. 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 a member 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 invalided out from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. He pleaded that the applicant was under stress of service conditions which may have led to occurrence of the disability. The Ld. Counsel for the applicant pleaded for disability pension to be granted to the applicant.

5. On the other hand, Ld. Counsel for the respondents submitted that the applicant was under holding period of formation of platoon for military training and was waiting for training due to insufficient number of recruits. Before commencement of military training, he got admitted at Military Hospital, Secunderabad on 28.10.2002 i.e. just after 10 days of joining the Training Centre. He further

stressed that the medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides, certain hereditary constitutional and congenial diseases may manifest later in life, irrespective of service conditions. The mere fact that the disease has manifested during military service does not per se establish attributability or aggravation of military service. The Ld. Counsel for the respondents further submitted that since there is no causal connection between the disease and the military service therefore the IMB has opined the disability as NANA and the applicant is not entitled to disability pension. He further accentuated that 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 the applicant has been assessed at 40% for five years and NANA, therefore the applicant is not entitled to disability pension. The Ld. Counsel for the respondents further submitted that claim

for disability pension has rightly been rejected by the competent financial authorities. He pleaded the O.A. to be dismissed.

6. We have heard Ld. Counsel for the parties and perused the material placed on record.

7. On careful perusal of the medical documents, it has been observed that the applicant was enrolled on 18.10.2002 and the disease had first started on 28.10.2002 i.e. just after 10 days of joining the training centre while the applicant was in holding state. He was admitted to Military Hospital, Secunderabad where after thorough investigation, Lt Col AK Mitra, Classified Specialist in Psychiatry had given the following remarks:-

*“The 19 year old recruit reported to AOC Centre for training on 19 Oct 2002. He was hospitalized on 28 Oct 2002 with an acute psychotic breakdown, before his second medical examination or initiation of military training.*

*Abnormal behaviour manifested with laughing and crying without reason, apprehension that he will be killed, perceiving abnormal sounds like the roaring of tigers and barking of dogs, and refraining from taking food as he felt that food served in the unit contained flesh of cats and dogs. He also expressed apprehension about his father, who is serving in the defence forces, being in danger, presently serving in operational area. He felt home sick. Patient felt that something was wrong with him, and attributed the symptoms to excessive consumption of almonds.*

*Patient acknowledged that he had suffered from similarly symptoms about a year prior to his recruitment, and had responded to treatment by a local medical practitioner. No family history of any psychotic illness was forthcoming.*

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*Psychiatric observation showed a withdrawn and negativistic individual, uncooperative and perplexed, occasionally arrogant, and frequently grimacing. He acknowledged auditory hallucination and bizarre persecutory defusion. Speech was guarded, and generally*

*relevant. Biorhythms were not grossly impaired, insight and judgment were lacking.*

*Patient was diagnosed to be suffering from Schizophrenia, and treated with antipsychotics. He responded to treatment and is presently in remission.*

*However, in view of the psychotic nature of the illness, with chances of recurrence, patient is considered unfit for military service.*

*Hence, recommended invalidment in med cat S5 of SHAPE factor.”*

Since the applicant, being a recruit, was recommended to be in Category S5, an IMB was carried out and he was discharged from service in medical category S5H1A1P1E1 with 40% disablement for five years. He was advised to take antipsychotic medicines with an instruction to periodic review by psychiatrist.

8. Therefore there appears to be strong weightage in the stand of the respondents that the applicant's disability 'Schizophrenia' was existing prior to enrolment as the same was admitted by the applicant to the Psychiatrist that he suffered the aforesaid disease about a year prior to enrolment. The Specialist opinion by the Psychiatrist in IMB mentions about it. We understand that dormant/latent constitutional diseases may not be detected during enrolment. Thus we are in agreement with the opinion of IMB proceedings. Additionally, a recruit is akin to a probationer and hence prima facie the respondents as an employer have a right to discharge a recruit who is not meeting the medical requirement of

military service. In view of the foregoing and the fact that the disease manifested within ten days of enrolment, we are in agreement with the opinion of IMB that the applicant was suffering from "Schizophrenia-295 F-20.0" before enrolment and thus the disability cannot be accepted as attributable to or aggravated by military service.

9. Apart from, in similar factual background Co-ordinate Bench of this Tribunal dismissed T.A. No. 1462/2010 vide order dated 23.05.2011 wherein the applicant was enrolled on 21.01.2000 and was discharged on 27.04.2010 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 Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 was dismissed on delay as well as on merits.

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

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated: September, 2019

gsr

**(Justice Virendra Singh)**  
**Chairperson**