

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

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

**ORIGINAL APPLICATION No. 72 OF 2018**

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

**“Hon’ble Mr. Justice Virender Singh, Chairperson  
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Ex-Recruit (Mess Waiter) Aftab Alam (Army No. 15423416-K) of No 2 Technical Training Battalion, Army Medical Corps, Centre and School, Lucknow, son of Shri Idrish Mohd, resident of village-Mawai Brahmnan, Tehsil-Hasanganj, Post Office-Laglesara, District-Unnao (UP)-241503.

.....Applicant

Ld. Counsel for: **Shri KKS Bisht**, Advocate  
the Applicant

Versus

1. Union of India, through the Secretary, Ministry of defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army) South Block, New Delhi-110011.
3. Officer-in-Charge, Army Medical Corps Records, Lucknow.
4. Commanding Officer, No 2 Technical Training Battalion, Army Medical Corps, Centre and School, Lucknow.
5. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Arun Kumar Sahu**,  
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) *Issue/pass an order or direction to the respondents to quash/set-aside the impugned orders dated 21.10.2016, 18.07.2016 and 13.09.2017 (Annexure No A-1 (ii), A-1 (iii), and A-1 (iv) passed illegally and without application of mind by the respondents.*
- (b) *Issue/pass an order/direction to the respondents of appropriate nature to give the disability of 20% as recommended by the Medical Board Proceedings and also to grant the benefits of rounding off of the disability pension benefits to the applicant by granting 50% disability pension with effect from 01.06.2007 as a matter of right as provided vide Government of India, Ministry of Defence letter No 1 (2)/97/D (Pen-C) dated 31.01.2001 (Annexure No A-10) supported by the position held by the Supreme Court.*
- (c) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allow this application with costs.*

2. The brief facts of this case are that the applicant was enrolled in the Indian Army on 26.04.2005 and invalided out of service w.e.f. 31.07.2007. While undergoing military training, he was admitted in Air Force Hospital, Bangalore where he was examined and treated by a Psychiatrist. He was diagnosed as a case of ‘Schizophrenia (F-20)’. The applicant was brought before Invaliding Medical Board (IMB) which recommended him

to be invalided out of service in medical category S5H1A1P1E1. On the recommendations of IMB he, as a recruit, was invalided out of service in terms of Rule 13 (3) (iv) of the Army Rules, 1954. The duly constituted IMB assessed his disability @ 20% for two years and opined it to be neither attributable to nor aggravated by military service (NANA). Disability pension claim was rejected. Appeal against rejection of disability pension claim was also rejected vide order dated 21.10.2016. Hence this O.A.

3. Ld. Counsel for the applicant submitted that 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 disability prior to enrolment, therefore any disability detected/suffered after joining the service, should be attributable to military service and the applicant is entitled to grant of disability pension.

4. On the other hand, Ld. Counsel for the respondents contended that the applicant's disability is neither attributable to nor aggravated by military service due to constitutional disorder, hence claim for disability pension has rightly been rejected by the competent authority. It

was also submitted that the applicant's disability was detected during basic training period wherein it was found that the disability suffered by the applicant was detected first time in August 2005 i.e. within four months of joining the training, meaning thereby his disability is not related to service. Ld. Counsel for the respondents further pleaded that since the applicant was suffering from the aforesaid disease prior to enrolment, he is not entitled to disability pension. He pleaded for the O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the IMB record in detail.

6. We have noted that this is a case of a recruit who was invalided out of service on grounds of disease 'Schizophrenia' before completion of his training. The IMB has opined the disease to be NANA with the remarks 'not connected with service, personality disorder, constitutional'. Additionally, the applicant was a recruit who was not even attested. Since the status of the applicant is akin to a probationer and the law is settled on the point that a probationer can be discharged from service at any point of time by his employer. Therefore the respondents as an employer have every right to

discharge the recruit from training and service when he is not meeting the medical requirements expected of a fully fit soldier.

7. When we go into details of the opinion of the Graded Specialist in Psychiatry, Lt Col Tejvir S Walia of Comd Hospital, AF Bangalore, we find that the doctor has mentioned in his remarks after examining and treating the patient that 04 months after enrolment when the applicant went home on leave in August 2005 his family members noticed his abnormal behaviour, lack of sleep, suspicious of poison in food, hearing male and female voices discussing about him etc and took him to a Psychiatrist in civil who advised Tab-Lithium Carbonate (100 mg/per day) with which the applicant recovered till he had a relapse and psychotic break down again in January 2007.

8. It appears that it is during his second break down that the applicant's disease surfaced in front of the respondents and he was hospitalized in January 2007 and invalidated out based on the medical opinion that a recruit with psychotic break down cannot be retained in service.

9. Thus in view of the clear evidence as recorded in medical opinion of IMB that the onset of disease was

within four months of enrolment in April 2005, we are inclined to agree with the opinion of the IMB that the disease is not connected with service and is a constitutional disease which has first manifested within four months of enrolment. We are of the opinion that four months of training as a recruit is too less a period to claim that this disease is a result of stress and strain of training. Additionally, we also agree with the respondents that diseases of constitutional and psychotic origin may not be detected at the outdoor enrolment rallies done all over remote parts of the country to select soldiers. Hence we are satisfied with the reasons inherent in IMB as to why this disease could not be detected at the time of enrolment.

10. In view of the aforesaid discussions, it is evident that the applicant was suffering from 'Schizophrenia' prior to enrolment and therefore he is not entitled to disability pension.

11. Apart from it, in identical factual background Co-ordinate Bench of this Tribunal dismissed T.A. No. 1462/2010 **Bhartendu Kumar Dwivedi vs. Union of India and others** vide order dated 23.05.2011 wherein the applicant was enrolled on 21.01.2000 and was discharged on 23.05.2000 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. Said order of this Tribunal has been upheld by Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 preferred against the aforesaid order was dismissed on delay as well as on merits.

12. The O.A. lacks merit and deserves to be dismissed. It is accordingly **dismissed**.

No order as to costs.

**(Air Marshal BBP Sinha)**      **(Justice Virender Singh)**  
**Member (A)**                      **Chairperson**

Dated:      September, 2019

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