

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 588 of 2018**Tuesday, this the 16<sup>th</sup> day of February, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Smt. Shiv Kumari  
Widow of No. 14485025 Recruit Late Hari Kesh Singh  
R/o Village – Gauripur, Post – Bishandaspur (Gauriganj)  
District Amethi, State – Uttar Pradesh, Pin Code-227409**.... Applicant**Ld. Counsel for the Applicant : **Shri Pankaj Kumar Shukla**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, South Block, New Delhi-110011.
3. The OIC Records, Topkhana Abhilekh, Artillery Records, Nasik Road Camp-422102, Maharashtra.
4. Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad.

**... Respondents**Ld. Counsel for the Respondents : **Ms. Anju Singh**,  
Central Govt Counsel.**ORDER**

1. The instant Original Application has been filed on behalf of the petitioner under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has sought following reliefs:-

- “A. To issue/pass an order to set-aside/quash the impugned order dated 12.04.1985 and impugned order vide letter no. 7/851/D/Pension/Appeal dated April 1986 passed by respondents, which are annexed as Annexure No.-1 and 2 respectively to this original application.

- B. To issue/pass an order or directions to the respondents to grant of disability pension of the applicant's husband from date of Invalided Medical Board out/Date of Discharge i.e. 16.06.1984 and S.O.S. 17.06.1984 to date of death of applicant's husband i.e. dated 30.04.1992 thereafter grant of family pension to the applicant alongwith interest @ 18% on the arrears of dues so accrued.
- C. To issue/pass any other order or direction to the respondents as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- D. To allow this original application with costs.

2. Brief facts of the case are that husband of the applicant was enrolled in the Indian Army on 29.06.1983 and was invalided out of service w.e.f. 17.06.1984 in low medical category 'EEE' under Army Rule 13(3) III (iv) due to disability "**SCHIZOPHRENIC PSYCHOSIS**", assessed @ 80% for two years and considered it neither attributable to nor aggravated by military service (NANA). Disability pension claim of husband of the applicant was rejected vide order 12.04.1985. An appeal dated 14.07.1985 preferred by husband of the applicant was also rejected vide order dated nil April 1986. Being aggrieved, applicant has filed this Original Application for grant of disability pension and family pension.

3. Learned counsel for the applicant submitted that husband of the applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded that a person 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. In this regard, he submitted that for grant of disability pension the law is settled by the Hon'ble Apex Court in the case of ***Dharambir Singh vs Union of India & Ors, Sukhvinder Singh vs. Union of India & Ors*** and Entitlement Rules and pleaded for disability to be considered as attributable to or aggravated by military service. He also prayed for disability pension to be granted @ 80% upto the date of death of husband of applicant and thereafter family pension to be granted.

4. On the other hand, Ld. Counsel for the respondents submitted that disability of husband of the applicant has been considered as neither attributable to nor aggravated by military service by the medical board, hence in view of Rule 173 of Pension Regulation for the Army, 1961 (Part-1), husband of the applicant is not entitled for disability pension. As regards service element of disability pension is concerned, it is contingent upon the continuance of disability element and unless and until husband of applicant has not put in minimum of 10 years of service, he is not entitled for service element of disability pension in terms of Note No. 01 of Rule 173 of Pension Regulation for the Army, 1961 (Part-1). As per Para 212 of Pension Regulation for the Army, 1961 (Part-1) and Army Instructions 51/80 family pension is granted to a widow/dependent of those soldiers who died either as a pensioner or while in service. Since, husband of applicant was not in

receipt of any kind of pension at the time of his death, applicant is not entitled for family pension.

5. We have heard learned counsel for both sides and perused the material placed on record.

6. On careful perusal of the records and medical documents, it has emerged that husband of the applicant was enrolled on 29.06.1983 and the disease had first started/originated in November 1983 during training period. After a detailed investigations by the classified specialist Psychiatrist, husband of the applicant was not found fit to continue training in service being a psychiatric nature of illness of unsound mind and was recommended by the Invaliding Medical Board to be invalided out of service in medical category 'EEE'.

7. The husband of the applicant was invalided out of service being low medical category EEE as recommended by IMB. Further, the competent authority while adjudicating the disability pension claim of husband of the applicant has also examined disability in the light of relevant rules and finally rejected being neither attributable to nor aggravated by military service and not connected to service. 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. We are in agreement with the opinion of IMB that disability of husband of the applicant is neither attributable to nor aggravated by military service and not connected with service, hence, husband of applicant is not entitled to disability

pension and accordingly, applicant also is not entitled for family pension.

8. Apart from it, in identical factual background this Tribunal dismissed T.A. No. 1462/2010, **Bhartendu Kumar Dwivedi vs. Union of India and others**, vide order dated 23.05.2011 wherein 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. Said order of this Tribunal has been upheld by the Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 preferred against the aforesaid order, has been dismissed on delay as well as on merits vide order dated 20.11.2017.

9. Additionally, in Civil Appeal No 7672 of 2019, **Ex Cfn Narsingh Yadav vs Union of India & Ors**, 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 during recruit 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 is as given 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. 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 O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to costs.

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

Dated: February, 2021

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