

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 326 of 2019**Monday, this the 25th day of January, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 15453206Y, Ex Rect Chandra Kant Yadav
S/o Rajendra Prasad
R/o Village & Post – Pakkhanpur, Police Station – Jaitpur
Tehsil – Jalalpur, District – Ambedkar nagar (UP) PIN-224125**.... Applicant**Ld. Counsel for the Applicant : **Shri Sudhir Kumar Singh**, Advocate.

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, Sena Bhawan, New Delhi-110011.
3. Senior Record officer, Army Medical Corps, PIN-900450, C/o 56 APO.
4. Appellate Committee of First Appeal, Director PS-4, AG's Branch, Integrated Headquarter of MOD (Army), DHQ PO, New Delhi-110011.
5. Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad-14.

... RespondentsLd. Counsel for the Respondents : **Dr. Chet Narain 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:-

- “(I) To pass an order or direction for quashing of order dated 05.03.2019 passed by OP No. 3, which is annexed as

Annexure No. 1. To this application, by which the applicant was illegally denied the disability pension.

- (II) To pass an order or direction commanding the respondents to grant the benefits disability pension to this applicant from the date of discharge i.e. 10.09.2016 along with interest @ 18% per annum till the actual realization of aforesaid amount.
- (III) To pass an order or direction commanding the respondent to grant the benefits of rounding of the disability pension in term of Govt. of India letter dated 31.01.2001 and various judgment of Apex Court as well as this Hon'ble Tribunal.
- (IV) Pass any order which this Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.
- (V) Allow the Original Application with cost."

2. Brief facts of the case are that the applicant was enrolled in the Indian army on 21.06.2015 and was invalided out of service w.e.f. 11.09.2016 in low medical category under Army Rule 13(3) III (iv) due to disability "**DEPRESSIVE EPISODE**", assessed @ 40% for life and considered it neither attributable to nor aggravated by military service (NANA). Disability pension claim of applicant was rejected vide order dated 05.03.2019. The applicant has not preferred any appeal against the rejection of claim. Being aggrieved, applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that 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 action of the respondents is violative of Article 14, 16 and 21 of Constitution of India and Government of India, MoD letter dated 31.01.2001. He further submitted that for grant of disability pension the law is settled by the Hon'ble Apex Court as well as this Hon'ble Tribunal in various cases and pleaded for disability to be considered as attributable to or aggravated by military service. He also prayed for disability pension to be granted @ 40% to be rounded off to 50%.

4. On the other hand, Ld. Counsel for the respondents submitted that disability of 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), he is not entitled for disability pension. He further submitted that IMB has opined that ***“this recruit with 11 months of service, has presented with a major psychiatric illness during his training, which has partially improved. He is unlikely to be a fit soldier to withstand the rigours of military service. Hence, in view of the above and in accordance with DGMS Memorandum 171/2002, he is recommended to be invalided out of service as a case of Depressive Episode in LMC S5”***. The Invaliding Medical Board has recommended applicant's disability as neither attributable to nor

aggravated by military service, hence, he is not entitled for disability 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 applicant was enrolled on 21.06.2015 and the disease had first started on 31.03.2016 during training period. After a detailed investigations by the classified specialist Psychiatrist, applicant was not found fit to continue training in service and was recommended by the Invaliding Medical Board to be invalided out of service in medical category P-5.

7. 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 the applicant has also examined applicant's disability in the light of relevant rules and finally rejected being neither attributable to nor aggravated by military 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 the applicant's disability is neither attributable to nor aggravated by military service and he is not entitled to disability 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 (in this case after about 13 days of 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

