

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 571 of 2021**

Monday, this the 31st day of January, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt. Maya Devi W/o No. 6904913 Late Sep. Rameshwar Singh,
R/o Village – Gwari Gautiya, PO – Pachpera, District – Bareilly
(UP).

..... **Applicant**

Ld. Counsel for the : **Shri K.K. Misra**, Advocate
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence,
New Delhi.
2. Chief of Army Staff, Army Head Quarters, New Delhi.
3. Officer-in-Charge, Army Ordnance Corps, Records,
Secunderabad.
4. PCDA (P), Allahabad.

.....**Respondents**

Ld. Counsel for the : **Ms. Kavita Mishra**, Advocate
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed under
Section 14 of the Armed Forces Tribunal Act, 2007 for
the following reliefs.

- (i) To quash AOC Records letter No. 6904913/ Pen/Dis dt 11 Sep 82, MoD letter No 7(84)/83/D (Pen-A) dt 28 Feb 1984, GOI, MoD letter No 6(161)/84/D/(Pen.App.Ctte) dt 8 April 1985, AOC Records letter No C/6904913/Pen/Dis-III dt 30 Jan 2005, and letter No 6904913/Pen/Dis-III dt 13 July 2005 (Annexure A-1, A-2, A-3, A-4 and A-6 to OA), and direct the respondents to grant disability pension to the applicant as per her entitlement.
- (ii) To direct the respondents to grant 70% disability pension to the applicant duly rounded off to 75% as per the policy on the subject, along with its arrears with interest.
- (iii) Any other relief which the Hon'ble Tribunal may think just and proper may be granted to the applicant.
- (iv) Cost of the case may be awarded in favour of the applicant.

2. Briefly stated facts of the case are that applicant's husband was enrolled in Army Ordnance Corps (AOC) of Indian Army on 20.01.1972 and was invalided out from service on 03.03.1981 (AN) in Low Medical Category EEE under Rule 13(3) Item III (iii) of Army Rules, 1954. At the time of invaliding from service, the Invaliding Medical Board (IMB) at Military Hospital, Jullundur Cantt. on 04.12.1980 assessed applicant's husband's disability

'NEUROSIS (300d)' @20% for two years and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's husband's claim for grant of disability pension was rejected vide letter dated 19.07.1982 which was communicated to the applicant's husband vide letter dated 19.08.1982. The applicant's husband preferred First Appeal which too was rejected vide letter dated 28.02.1984. The applicant's husband preferred Second Appeal which too was rejected vide letter dated 08.04.1985. The applicant's husband also preferred Appeals dated 25.11.2004 and 03.03.2005 which too were replied vide letters dated 20/30.01.2005 and 13.07.2005. It is in this perspective that the applicant has preferred the present Original Application.

3. The applicant pleaded that the applicant's husband was enrolled in the Army in medically and physically fit condition. It was further pleaded that an individual 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's

husband was under stress and strains due to rigors of service conditions which may have led to occurrence of the disability. The applicant, on account of aforesaid, pleaded for disability pension to be granted to the applicant's husband.

4. On the other hand, Ld. Counsel for the respondents submitted that since the IMB has opined the disability as NANA, the applicant's husband is not entitled to disability pension. He further accentuated that the applicant's husband is not entitled to disability pension in terms of Regulation 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's has been assessed NANA, therefore, the applicant's husband is not entitled to disability pension.

5. The Ld. Counsel for the respondents further submitted that claim for disability pension has rightly been rejected by the competent authority in view of para 198 of Pension Regulations for the Army, 1961 (Part-I), which

categorically states that the minimum period of qualifying service actually rendered and required for grant of invalid pension is ten years, but in the instant case the applicant's husband has put in only 09 years, 01 month and 14 days of service. He pleaded that in the facts and circumstances, as stated above, Original Application deserves to be dismissed.

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

7. On careful perusal of the documents, it has been observed that the applicant's husband was enrolled on 20.01.1972, and the disease applicant's husband was found to be suffering with in medical test within eight years of joining the service as the applicant's husband was invalided out from service on 03.03.1981 (AN).

8. In the above scenario, we are of the opinion that since the disease has started in less than eight years of applicant's husband's enrolment, hence by no stretch of imagination, it can be concluded that it has been caused by stress and strains of military service. Additionally, it is well known that mental disorders can escape detection at the time of enrolment, hence benefit of doubt cannot be

given to the applicant's husband merely on the ground that the disease could not be detected at the time of enrolment. Since there is no causal connection between the disease and military service, we are in agreement with the opinion of the IMB that the disease is NANA. In view of the foregoing and the fact that the disease manifested in less than eight years of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.

9. Apart from, in similar factual background this Tribunal had dismissed the claim for disability pension in T.A. No. 1462/2010 vide order dated 23.05.2011, wherein the applicant was enrolled on 21.01.2000 and was discharged on 27.04.2000, 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. The said order has been upheld by the Hon'ble Apex Court in Civil Appeal arising out of Dy. No. 30684/2017, *Bhartendu Kumar Dwivedi Versus Union of India and Others*, decided on November 20, 2017, by dismissing Civil Appeal on delay as well as on merits.

10. Additionally, in Civil Appeal No 7672 of 2019 in ***Ex Cfn Narsingh Yadav vs Union of India & Ors***, decided

on 03.10.2019, 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 three years of 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 as given in para 20 is as 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 which may warrant the constitution of the Review 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."

11. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

12. No order as to costs.

13. Pending applications, if any, are disposed of accordingly.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 31 January, 2022

AKD/-