

Court No. 1 (E-Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 234 of 2019**

Tuesday, this the 06th day of April, 2021

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

Ram Bharat Rai (No. 6310419 – Ex. Signalman), S/o Late Ram Baran Rai, R/o Village Mahrupur, Post Mohammadabad Yusufpur, District Ghazipur.

..... Applicant

Ld. Counsel for the : **Shri Shiv Dayal Singh**, Advocate
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Officer-in-Charge Signals, Records PIN-908770 C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....**Respondents**

Ld. Counsel for the : **Shri Shyam Singh**,
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) This Hon'ble Court may graciously be pleased to direct the respondents to give disability pension along with its arrears and interest to the applicant w.e.f. 15.12.1969 (invalided out for being medically unfit towards his disability 'NEUROSIS' (Permanent).
- (ii) This Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.
- (iii) Award costs to the applicant.

2. Briefly stated facts of the case are that applicant was enrolled in Corps of Signals of Indian Army on 12.08.1965 and was invalided out from service on 15.12.1969 in Low Medical Category under Rule 13(3) Item III (iii) of Army Rules, 1954. At the time of invaliding from service, the Invaliding Medical Board (IMB) assessed his disability '**NEUROSIS**' and opined the disability to be neither attributable to nor aggravated (NANA) by service. Although the applicant has been informed that all the documents related to service of applicant have already been destroyed after completion of 25 years vide letter dated 23.01.2018. The applicant's claim for grant of disability pension was rejected vide letter dated 13.03.1970. It is in this perspective that the applicant has preferred the present Original Application.

3. The applicant pleaded that the applicant 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 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.

4. On the other hand, Ld. Counsel for the respondents submitted that since the IMB has opined the disability as NANA, 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 NANA, therefore, the applicant 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 has put in only 04 years and 126 days of service. He further submitted that all the evidence have been destroyed being non pensioner after expiry of stipulated retention period. 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 was enrolled on 12.08.1965, and the disease applicant was found to be suffering with in

medical test within five years of joining the service as the applicant was invalided out from service on 15.12.1969.

8. In the above scenario, we are of the opinion that since the disease has started in less than five years of his 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 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 five 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. Apart from above, it has also been observed that applicant has approached this Tribunal when all the medical documents including IMB proceedings were destroyed after expiry of stipulated retention period. The only available document is Long Roll. There is no mention in the Long Roll about the disability, percentage and opinion of IMB. In case the applicant was aggrieved from his invaliding out from service and from the assessment of IMB, he could have approached Court for redressal of his grievance at that time itself. In absence of IMB proceedings the assessment of disability, percentage and opinion of IMB cannot be determined.

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

13. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 06 April, 2021

AKD/-