

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 339 of 2020**Wednesday, this the 07<sup>th</sup> day of April, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 13627700 P Ex Recruit Narendra Kumar, Son of Shri Baljeet Singh, R/o Village and Post : Nisurkha, District Bulandshahr (UP), Pin-245411.

..... Applicant

Ld. Counsel for the : **Shri R. Chandra**, Advocate.  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), DHQ Post Office, New Delhi-11.
3. The Officer-in-Charge Records, The Parachute Regiment, PIN-900493, C/o 56 APO.
4. The Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad – 14 (UP).

.....**Respondents**Ld. Counsel for the : **Shri Arun Kumar Sahu**,  
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) Hon'ble Tribunal may be pleased to set aside the Impugned Order dated 20.06.2017 (Annexure No. A-1) and order dated 11.09.2018 (Annexure No. A-2).
- (II) Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 21.03.2009 with the interest at the rate of 18% per annum.
- (III) Hon'ble Tribunal may be pleased to further grant benefit of rounding off disability pension @50 percent in term of Ram Avtar's case.
- (IV) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.

2. Briefly stated facts of the case are that applicant was enrolled in the Parachut Regiment of Indian Army on 14.01.2008 and was invalided out from service on 20.03.2009 in Low Medical Category under Rule 13 (3) Item IV of the Army Rules, 1954. At the time of invaliding from service, the Invaliding Medical Board (IMB) held at Command Hospital Air Force, Bangalore on 10.02.2009 assessed his disabilities (i) '**GENERALIZED SEIZURES**' @30% for life, (ii) '**ANTERIOR CHANIAL FOSSA DEFECT WITH PNEUMOENCE PHALLUS (OPERATED)**' @ Nil for life and (iii) '**OPEN LIP SCHIZENCEPHALY**' @ Nil for life and opined the disabilities to be neither attributable to nor

aggravated (NANA) by service. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 20.08.2009. The applicant preferred First Appeal and Second Appeal which too were rejected vide letters dated 20.06.2017 and 11.09.2018 respectively. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for 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. He further stressed that the Medical Board has also mentioned onset/origin of the disease during service/training, therefore, the disability should be accepted as attributable to military service. The Ld.

Counsel for 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 first disability of the applicant has been assessed at 30% for life and NANA, therefore, the applicant is not entitled to disability pension. 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 01 year, 02 months and 07 days

of service. He pleaded that in the facts and circumstances, as stated above, Original Application deserves to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. On careful perusal of the medical documents, it has been observed that the applicant was enrolled on 14.01.2008, and the diseases applicant was found to be suffering with in medical test first started on 25.07.2008, i.e. within eight months of joining the service. He was administered treatment at Command Hospital Air Force (CHAF), Bangalore on 25.07.2008. On admission in the Hospital the case history of the applicant was endorsed by Wg. Cdr. Salil Gupta, Classified Specialist Medicine and Neurologist, CHAF, Bangalore as under:-

*"This recruit has had a generalized seizure due to ACF defect pneumoence phallus. He has also been found to have open lip schizencephaly which also may have been the cause for seizure. In view of the structural brain defect he is unfit to continue further training."*

7. In the above scenario, we are of the opinion that since the diseases have started in less than eight months 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 diseases could not be detected at the time of enrolment. Since there is no causal connection between the diseases and military service, we are in agreement with the opinion of the IMB that the diseases are NANA. Additionally, a recruit is akin to a probationer and hence, prima facie the respondents as an employer have every right to discharge a recruit who is not meeting the medical requirement of military service and is not likely to become a good soldier. In view of the foregoing and the fact that the diseases manifested in less than eight months of enrolment, we are in agreement with the opinion of IMB that the diseases are NANA.

8. Apart from, in similar factual background a Regional Bench of Armed Forces 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.

9. 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 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."*

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

11. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 07 April, 2021

AKD/-