

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
(CIRCUIT BENCH AT NAINITAL)**

**Original Application No. 434 of 2021**

Tuesday, this the 22<sup>nd</sup> day of February, 2022

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

No. 4197432K Rect Ajay Kumar Singh Bohra  
S/o Ratan Singh Bohra, R/o Pawan Vihar Colony, P.O. Bin,  
District – Pithoragarh – 252601, Uttarakhand

.... **Applicant**

Ld. Counsel for the Applicant : **Shri Kishore Rai**, Advocate

Versus

1. Union of India, Ministry of Defence, through its Secretary, South Block, New Delhi-110011.
2. P.C.D.A. (P) Allahabad, Uttar Pradesh.
3. Chief of Army Staff, Integrated Headquarters, Ministry of Defence (Army), New Delhi-110011.
4. Senior Record Officer, Kumaon Regiment, Ranikhet, District Almora.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Rajesh Sharma**,  
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) A direction to grant the disability pension to the applicant w.e.f. 16.05.2002 along with the rounding off to the tune of 50% or to
- (ii) To summon the entire records of the applicant pertaining to computation of his disability pension.
- (iii) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 01.01.2002 and was invalided out of service w.e.f. 14.06.2002 in low medical category 'P5' under Rule 13 (3) III (IV) of Army Rules, 1954 due to disability "**LEFT MOTOR SEIZURE SECONDARY GENERALIZATION 345**", assessed @ 20% for life and considered it neither attributable to nor aggravated by military service (NANA) and not connected with service. The applicant submitted a representation for grant of disability pension which has not been replied by the respondents. 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 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** and **Sukhvinder Singh vs. Union of India & Ors** and pleaded for disability to be considered as attributable to or aggravated by military service. He also prayed for disability pension to be granted @ 20% 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 Invaliding 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 applicant contracted the disease prior to joining the service. The Invaliding Medical Board has recommended applicant's disability @ 20% as neither attributable to nor aggravated by military service and also not connected with service being a constitutional disease, 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 01.01.2002 and the disease had first started on 21.03.2002 when he was admitted in Military Hospital, Ranikhet within two months 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 'P5' being suffering from constitutional disease which is not connected with service.

7. The applicant was invalided out of service being low medical category 'P5' 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 two months 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 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. Pending application, if any, stands disposed of.

12. No order as to costs.

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

Dated: February, 2022  
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