

Court No. 1 (E Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 212 of 2020**

Monday, this the 19th day of July, 2021

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

No. 2695579X Ex Rect Ravindra Yadav, Son of Shri Radhey Shyam Yadav, Resident of Village – Kanjehra, Post – Asna, District- Chandauloi- 232110 (UP)

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, (Army), Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), DHQ Post Office, New Delhi-110011.
3. The Officer-in-Charge Records, The Grenadiers Records, PIN- 908776, C/O 56 APO.
4. The Chief Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)-211014.

.....**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). *Hon’ble Tribunal may be pleased to set aside the impugned order dated 12/02/2001 (Annexure No A-1), dated 28/02/2001 (Annexure No A-2) and dated 08/11/2001 (Annexure No A-3).*
- (II). *Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 26/08/2000 with the interest at the rate of 18% per annum.*
- (III). *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. Considering that in pensionary matters bar of limitation is not applicable, delay in filing Original Application is condoned.

3. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 17.01.2000. During basic military training he was found to have **“COLOUR PERCEPTION CP-IV and EXOTROPIA”** on second medical examination. Medical authority at Command Hospital, Central Command, Lucknow recommended him to be invalided out from service. Invaliding Medical Board of the applicant held at Military Hospital, Jabalpur on 20.07.2000 assessed his disability @ less than 20% (i.e. 15-19%) for two years and opined the disability to be neither attributable to nor aggravated (NANA) by service. Applicant was invalided out on

25.08.2000 in Low Medical Category EEE under Rule 13 (3) Item IV of the Army Rules, 1954 for having been found unfit for further military service. His claim for grant of disability pension was rejected by the respondents vide letter dated 15.10.2001. His appeals for grant of disability pension were also rejected vide order dated 01.06.2017 and 28.12.2017. It is in this perspective that the applicant has preferred the present Original Application for grant of disability pension.

4. 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. The Ld. Counsel for the applicant, on account of aforesaid, pleaded for disability pension to be granted to the applicant.

5. On the other hand, Ld. Counsel for the respondents submitted that since the IMB has opined the disability less than 20% (i.e. 15-19%) and considered as neither attributable to nor aggravated (NANA) by military service, the applicant is not entitled

to disability pension. He further stressed that Invaliding Medical Board has also opined that disease could be existing before entering in military service and the applicant is unlikely to withstand the stress of training and is unlikely to serve as a fit soldier. 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 less than 20% for two years and considered as 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 07 months 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 parties and perused the material placed on record.

7. On careful perusal of the medical documents, it has been observed that the applicant was enrolled on 17.01.2000, and the disease applicant was found to be suffering with in medical test first started on 11.05.2000, i.e. within four months of joining the service. He was administered treatment at Command Hospital, Lucknow. On admission in the Hospital, summary of opinion of the applicant was endorsed by Col RP Misra, Senior Adviser (Ophthal), as under:-

"This recruit was found to have colour perception CP IV and exotropia during 2nd Medical Exam.

As such referred for this opinion of Senior Adviser Ophthal.

On EXAM

- 1) Colour perception CP IV (MLT).
- 2) Exotropia 15.

UNFIT

Recommended to be invalided out of service in medical category 'EEE'.

8. In the above scenario, we are of the opinion that since the disease has started in less than four 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 such type of disease 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. 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 disease manifested in less than four months of enrolment, we are in agreement with the opinion of IMB that the disease is NANA.

9. 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.

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. Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 19 July, 2021

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