

Form No. 4
{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

2. O.A. No. 80 of 2018

Ex. Cfn Kadam Devidas Namdeorao
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondent

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>26.08.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Heard Mr. Willson Gaikwad, Ld. Counsel for the applicant and Mr. A.J. Mishra, Ld. Counsel for the respondents.</p> <p style="text-align: center;">Original Application is dismissed.</p> <p style="text-align: center;">For orders, see our order passed on separate sheets.</p> <p style="text-align: center;">Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%; text-align: center;"> (Vice Admiral Abhay Raghunath Karve) Member (A) </div> <div style="width: 45%; text-align: center;"> (Justice Umesh Chandra Srivastava) Member (J) </div> </div> <p>AKD/AMK/-</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

ORIGINAL APPLICATION No. 80 of 2018

Friday, this the 26th day of August, 2022

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

Ex. Cfn. No. 14519222 Kadam Devidas Namdeorao, S/o
Namdeorao Kadam . Jijamata Teacher Colony, Sant Namdeo
Nagar, Dhanora Road, Beed, Pin-431122, Maharashtra.

..... **Applicant**

Ld. Counsel for the : **Mr. Willson Gaikwad**, Advocate
Applicant

Versus

1. Union of India through Ministry of Defence, New Delhi.
2. Additional Directorate General of Personnel Services AG’s
Branch, IHQ of Ministry of Defence (Army), Room No. 11,
Plot No. 108 (W), Brassay Avenue, Church Road, New
Delhi-110001.
3. EME Records, Secunderabad-900453, C/o 56 APO.

.....**Respondents**

Ld. Counsel for the : **Mr. A.J. 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:-

- (a) *In view of the facts mentioned above the applicant prays for the following reliefs with cost.*

Directions to the Respondents to sanction the disability pension for 20% disability with rounding up to 50% disability. The applicant is fully entitled to disability pension within the provisions of Regulation 48 read with Regulation 53 of the Pension Regulations. The applicant requests for sanction of the disability pension from his date of discharge on medical grounds i.e. 31.07.1982.

- (b) *Any other relief deemed fit by the Hon'ble Tribunal.*

2. Briefly stated facts of the case are that applicant was enrolled in the Corps of EME of Indian Army on 10.09.1974 and discharged from service on 31.07.1982 (AN) in Low Medical Category under sub-clause 2A to Rule 13 (3) of the Army Rules, 1954. At the time of invalidation from service, the Release Medical Board (RMB) held at Pune on 30.04.1982 assessed his disability '**NEUROSIS**' @20% for two years and opined the disability to be neither attributable to nor aggravated (NANA) by service. In compliance of order dated 11.01.2019 of this Tribunal in the present Original Application, the Re-Assessment/ Review Medical Board held at Military Hospital, Kirkee on

04.09.2019 assessed his disability for the intervening period i.e. with effect from 16.04.1984 till date, to be considered as same 20% for two years. The applicant's claim for grant of disability pension was rejected vide letter dated 31.01.1983 which was communicated to the applicant vide letter dated 28.02.1983. The applicant preferred First Appeal which too was rejected vide letter dated 01.06.2017 which was communicated to the applicant vide letter dated 22.06.2017. The applicant preferred Second Appeal which too was rejected vide letter dated 04.01.2018. 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 discharged from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. The Ld. Counsel for the applicant, on account of aforesaid, pleaded for

disability pension and its rounding off to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that since the RMB 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 Regulation 173 of Pension Regulations for the Army, 1961 (Part-I), which stipulates that, *"Unless otherwise specifically provided a disability pension consisting of service element and disability element 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 in non-battle casualty and is assessed at 20 per cent or over. The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."* Accordingly, the applicant was informed about the rejection/non-entitlement of disability element. 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 documents, it has been observed that the applicant was enrolled on 10.09.1974, and the disease applicant was found to be suffering with in medical test first started in June, 1979, i.e. within five years of joining the service.

7. 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 RMB that the disease is NANA. In view of the foregoing and the fact that the disease manifested in less than five year of enrolment, we are in agreement with the opinion of RMB that the disease is NANA.

8. Apart from above, in similar factual background Armed Forces Tribunal, Regional Bench, Lucknow 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 (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."

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) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 26 August, 2022

AKD/AMK/-