

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI
E-Court

3. O.A. No. 64 of 2021 with M.A. No. 46 of 2021

Kondiram Banshi Meher By Legal Practitioner for the Applicant	Versus	Applicant
Union of India & Others By Legal Practitioner for Respondents		Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>26.07.2022</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>Heard Mr. S.B. Shirsat, Ld. Counsel for the applicant and Mr. A.J. Mishra, Ld. Counsel for the respondents.</p> <p>The Original Application has been filed with delay of 50 years, 03 months and 21 days.</p> <p>Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but for the reasons stated in affidavit filed in support of application.</p> <p>Per contra, learned counsel for the respondents submits that explanation of delay offered by the applicant is not sufficient as he has failed to offer day to day explanation of delay.</p> <p>Considering that in pensionary matters bar of limitation is not applicable and grounds stated in affidavit filed in support of delay condonation application are genuine and sufficient, delay is liable to be condoned.</p> <p>Accordingly, delay in filing application is condoned. Delay condonation application stands decided accordingly.</p> <p><u>O.A. No. 64 of 2021</u></p> <p>Heard Mr. S.B. Shirsat, Ld. Counsel for the applicant and Mr. A.J. Mishra, Ld. Counsel for the respondents.</p> <p>Original Application is allowed <i>dismissed</i></p> <p>For order, see our Judgment passed on separate sheets.</p> <p>Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.</p> <p>(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>AKD/SB/-</p>

E. Court

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

ORIGINAL APPLICATION No. 64 of 2021

Tuesday, this the 26th day of July, 2022

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

Ex. Swr Kondiram Banshi Meher, Army Number 1186716 R/o
 Village-Jamgaon, Tehsil-Parner, District-Ahmednagar, State-
 Maharashtra, Pin-414301.

..... Applicant

Ld. Counsel for the : **Shri S.B. Shirsat**, Advocate
 Applicant

Versus

1. Union of India, Through Secretary to Government of India,
 MoD, South Block, New Delhi-110011.
2. Officer in Charge Armoured Corps Records Pin-900476 C/o
 56 APO.

..... Respondents

Ld. Counsel for the : **Shri 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:-

- (I) *Directions be given to respondents no.1 and 2
 to grant the medical disability pension to
 applicant as his medical category was
 downgraded from "AYE to EEE".*

(II) Applicant be granted medical disability pension from the date of discharge from service.

(III) Any other suitable orders be passed in favour of applicant.

2. Briefly stated facts of the case are that applicant was enrolled in the Corps of Artillery of Indian Army on 18.02.1963, transferred to Armoured Corps on 04.11.1966 and was invalided out from service on 23.11.1968 (AN) in Low Medical Category under Rule 13 (3) Item III (iii) of the Army Rules, 1954. At the time of invalidation from service, the Invaliding Medical Board (IMB) held at Command Hospital (Southern Command) Poona (now Pune) on 30.10.1968 assessed his disability **'SCHIZOPHRENIC REACTION (UNSOUND MIND) (300)'** @50% for two years and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 03.06.1969 which was communicated to the applicant vide letter dated 20.06.1969. The applicant preferred First Appeal which too was rejected vide letter dated 03.03.1970. The applicant preferred Second Appeal which too was rejected vide letter dated 01.12.1975. The applicant preferred several

petitions but of no avail. 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~~^{is} 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. 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 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 18.02.1963, and the disease applicant was found to be suffering with in medical test first started on 05.06.1968, i.e. within six years of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than six 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 six years of enrolment, we are in agreement with the opinion of IMB 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 July, 2022

AKD/