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

6. O.A. No. 65 of 2021 with M.A. No. 32 of 2021

**Saudagar Ramchandra Mate**  
By Legal Practitioner for the Applicant

Applicant

**Versus**

**Union of India & Others**  
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><b><u>26.07.2022</u></b> <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b> <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>On the case being taken up for hearing no one is present on behalf of the applicant.</p> <p>Heard Mr. A.J. Mishra, Ld. Counsel for the respondents.</p> <p>There is a delay of more than 39 years in filing of Original Application regarding which an application for condonation of delay has been filed.</p> <p>Being a pensionary matter in which cause of action accrues every month, delay is <b>condoned</b>. Delay condonation application stands disposed off.</p> <p><b><u>O.A. No. 65 of 2021</u></b></p> <p>Heard Ld. Counsel for the respondents.</p> <p>Original Application is <b>dismissed on merit</b>.</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 style="text-align: center;"><b>(Vice Admiral Abhay Raghunath Karve)</b> <b>Member (A)</b></p> <p style="text-align: center;"><b>(Justice Umesh Chandra Srivastava)</b> <b>Member (J)</b></p> <p>AKD/SB/-</p>

**E. Court**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI**

**ORIGINAL APPLICATION No. 65 of 2021**

Tuesday, this the 26<sup>th</sup> day of July, 2022

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

Shri Saudagar Ramchandra Mate Army no. 14524472 R/o 27,  
Barbole, Plot Shivshakti, Nagar, Barshi, Solapur-413411.

..... Applicant

Ld. Counsel for the : **None**  
Applicant

Versus

1. The Union of India Through the Secretary, Govt. of India,  
Ministry of Defence, New Delhi.
2. The Senior Record Officer, EME Records Secunderabad-  
21.

..... 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:-

(A) *This Hon'ble Tribunal be pleased to declare  
that the decision / order of the respondent  
No.2 here in by letter No. 14524472/DP-3/Pen  
dt. 03.01. 2019 and B/38046A/ 17/2018/AG/  
PS-4 (second appeal) dt. 12.12.2018 is illegal*



*and bad in law being contrary to the principle of natural justice.*

- (B) This Tribunal be pleased to direct the respondents to pay disability pension to applicant from date of discharge till date with interest @ 12% pa till its realization.*
- (C) This Hon'ble Tribunal be pleased to declare that the applicant is entitled for service pension from respondent No.2*
- (D) This Hon'ble Tribunal be pleased to direct the respondents to pay service pension to applicant from 02.11.1981 to till date.*
- (E) This Hon'ble Tribunal be pleased to direct the respondents to pay arrears of pension to applicant from date of the discharge to till date with interest @12% p.a. till its realization.*
- (F) Cost of the application be provided for.*
- (G) Pass any such other orders as this Hon'ble Tribunal may deem fit and proper in the Circumstances of the case.*

2. Briefly stated facts of the case are that applicant was enrolled in the Corps of EME of Indian Army on 27.09.1975 and was invalided out from service on 31.10.1981 (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 Military Hospital, Devlali on 02.09.1981

assessed his disability '**GENERALISED EPILEPSY ADULT ON SET 345'** @15-19% 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 19.04.1982 which was communicated to the applicant vide letter dated 11.05.1982. The applicant preferred First Appeal which too was rejected vide letter dated 12.09.2017 which was communicated to the applicant vide letter dated 06.10.2017. The applicant preferred Second Appeal which too was rejected vide letter dated 12.12.2018 which was communicated to the applicant vide letter dated 03.01.2019. It is in this perspective that the applicant has preferred the present Original Application.

3. The applicant pleaded that he 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. The



applicant, on account of aforesaid, pleaded for disability pension to be granted to him.

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 respondents and perused the material placed on record.

6. On careful perusal of the documents, it has been observed that the applicant was enrolled on 27.09.1975, and the disease applicant was found to be suffering with in medical test first started on 19.06.1976, i.e. within one year of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than one year 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 Epilepsy is a disorder that originates in the <sup>in</sup>branch. One definition of Epilepsy by the world famous Mayo Clinic of USA is "*Epilepsy is a central nervous system (neurological) disorder in which brain activity becomes abnormal, causing seizures or periods of unusual behavior, sensations and sometime loss of awareness.*" Moreover it is 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 one year 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)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 26 July, 2022

AKD/