

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI
(SI. No. 35)

O.A. No. 06 of 2019

Ex. Sep. Barun Rajbongshi Applicant
By Legal Practitioner for the Applicant : Ms. Rita Devi, Advocate
Shri A.R. Tahbildar, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : Shri P.J. Barman, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>06.04.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Air Marshal Balakrishnan Suresh, Member (A)</u></p> <p>Heard Shri A.R. Tahbildar, Ld. Counsel for the applicant and Shri P.J. Barman, Ld. Counsel for the respondents.</p> <p>Original Application is dismissed.</p> <p>For orders, see our order passed on separate sheets.</p> <p>Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <p style="text-align: center;">(Air Marshal Balakrishnan Suresh) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>AKD/MC/-</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

ORIGINAL APPLICATION No. 06 of 2019

Thursday, this the 06th day of April, 2023

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Air Marshal Balakrishnan Suresh, Member (A)”**

No. 4358768 Ex. Sep. Barun Rajbongshi

..... Applicant

Ld. Counsel for the Applicant : **Ms. Rita Devi, Advocate
Shri A.R. Tahbildar, Advocate**

Versus

Union of India & Others.

..... Respondents

Ld. Counsel for the Respondents. : **Shri P.J. Barman, Advocate
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) *quash and set aside the impugned order issued by the Govt. of India, Ministry of Defence vide their letter No. 7(801)/95/D/(Pen-A&AC) dated 22nd/24th/1996 (Annexure -C) and the connected communication dated 01.06.1996 (Annexure -D) issued by the Record Officer, Records, The Assam Regiment rejecting payment of disability element of pension to the applicant.*
- b) *direct the authorities to grant Disability Pension holding the applicant's disability as attributable to or aggravated by military service, with rounding off benefit and pay arrear with interest thereon.*
- c) *Pass such other or further order(s) as your Lordships may deem fit and proper.*

2. Briefly stated facts of the case are that applicant was enrolled in the Assam Regiment of Indian Army on 08.09.1987 and was invalided out from service on 21.08.1992 (AN) in Low Medical Category after rendering 04 years, 11 months and 13 days of service

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 158 Base Hospital on 23.07.1992 assessed his disability '**SCHIZOPHRENIA ICD NO. 295**' @20% for life 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 26.05.1993 which was communicated to the applicant vide letter dated 24.06.1993. The applicant preferred First Appeal which too was rejected vide letter dated 22.04.1996 which was communicated to the applicant vide letter dated 01.06.1996. 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 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. The Ld. Counsel for the respondents further submitted that claim for disability pension has rightly been rejected by the competent authority in view of Regulation 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 service element of disability pension/invalid pension is ten years, but in the instant case the applicant has put in only 04 years, 11 months and 13 days of service. 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 08.09.1987, and the disease applicant was found to be suffering with in medical test first started on 11.09.1991, i.e. within four years of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than four 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 four 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 this 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.

9. Additionally, in Civil Appeal No 7672 of 2019 in ***Ex Cfn NarsinghYadavvs 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.

(Air Marshal Balakrishnan Suresh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 06 April, 2023

AKD/-