

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI
(Sl. No. 10)

O.A. No. 28 of 2020 with M.A. No. 20 of 2020

Ex. Sep. (MT) Jahidul Islam Applicant
By Legal Practitioner for the Applicant : Shri Zahangir Hussain, Advocate
Shri Rupam Jyoti Sarma, 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>05.04.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Air Marshal Balakrishnan Suresh, Member (A)</u></p> <p><u>M.A. No. 20 of 2020</u></p> <p>This application has been for condoning delay of 20 years in filing of Original Application for the grant of disability pension to the applicant. For the reasons stated in affidavit filed in support of delay condonation application, delay in filing the Original Application is condoned. Delay condonation application stands disposed off.</p> <p><u>O.A. No. 28 of 2020</u></p> <p>Heard Shri Rupam Jyoti Sharma, Ld. Counsel for the applicant and Shri P.J. Barman, Ld. Counsel for the respondents. Original Application is dismissed. For orders, see our order passed on separate sheets. Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <p style="text-align: center;">(Air Marshal Balakrishnan Suresh) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>AKD/MC/-</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

ORIGINAL APPLICATION No. 28 of 2020

Wednesday, this the 05th day of April, 2023

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

Ex. Sep (MT) Jahidul Islam (No. 14810403-L)

..... Applicant

Ld. Counsel for the Applicant : **Shri Zahangir Hussain
(Legal Aid Counsel)
Sri Rupam Jyoti Sharma, Advocate**

Versus

Union of India & Others.

..... Respondents

Ld. Counsel for the Respondents. : **Shri PJ 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:-

- (i) *To grant disability pension to the applicant from the date of his discharge 08.04.1999 and other consequential relief as may be*

admissible as per government rules and regulation, notification and/or any other order as deem fit and proper.

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 25.11.1993 and was invalided out from service on 20.10.1997 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 167 Military Hosapital on 22.01.1999 assessed his disability **"AFFECTIVE PSYCHOSIS (MDP) MANIC TYPE"** opined the disability to be neither attributable to nor aggravated (NANA) by service and was assessed at 6-10% (less than 20%) for two years. The applicant's claim for grant of disability pension was rejected. The applicant had filed Writ Petition (C) No. 783 of 2004 before the Hon'ble Guwahati High Court at Guwahati which was transferred to this Tribunal and was registered and re-numbered as Transferred Application. The said Transferred Application was disposed off on 22.11.2011 with direction to the applicant to file necessary application support by documents within one month from the date of order in terms of Regulation 143 of the Army

Regulations and upon receipt of such application, if so filed, the respondent authority shall take appropriate steps to get the applicant examined medically and thereafter in terms of medical report shall pass necessary order relating to the service of the applicant as he may deem fit and proper under the law. In compliance of the said order the applicant was examined by Graded Specialist of 151 Base Hospital on 29.03.2012 and the decision of the same was communicated to the applicant vide letter dated 26.06.2012. 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 less than five years 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 25.11.1993, and the disease applicant was found to be suffering with in medical test first started on 16.05.1997, i.e. within 04 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 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 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 Mshl Balakrishnan Suresh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 05th April, 2023

AKD/KK