

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

12. O.A. No. 33 of 2017

Ex. GNR Shinde Gajanan Balaji  
By Legal Practitioner for the Applicant

Versus

Applicant  
  
Respondents

Notes of the Registry	Orders of the Tribunal
	<div>06.06.2022</div> <div><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></div> <div>Heard Shri R.B. Somwanshi, Ld. Counsel for the applicant and Shri B.K. Ashok, Ld. Counsel for the respondents. Original Application is <b>dismissed</b>. For order, see our Judgment passed on separate sheets. Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.</div> <div><div>Sd/-</div><div>(Vice Admiral Abhay Raghunath Karve) Member (A)</div><div>Sd/-</div><div>(Justice Umesh Chandra Srivastava) Member (J)</div></div> <div>AKD/Mhi/-</div>

## ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

## ORIGINAL APPLICATION No. 33 of 2017

Monday, this the 06<sup>th</sup> day of June, 2022

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

No. 15187153Y Ex. GNR Shinde Gajanan Balaji, R/o Vill Antargaon, PO Barbada, Tah Barbada, Dist. Nanded Sate of Maharashtra.

..... Applicant

Ld. Counsel for the : **Shri R.B. Somwanshi**, Advocate  
 Applicant

Versus

1. Union of India through Ministry of Defence, New Delhi.
2. Chief of the Army staff, Army Headquarters, New Delhi-11.
3. The Chief Records Officer, Artillery Records, PIN 908802, C/o 56 APO.
4. The Senior Accounts Officer, The PCDA (P), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the : **Shri B.K. Ashok**, 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) *The applicant was invalidated out from service due to NON ORGANIC PSYCHOSIS after completing*



*02 years 07 months and 05 days, the decision of the second appellate committee vide their letter No. B/38046A/449/2015/AG/PS-4 (2<sup>nd</sup> Appeal) dated 03 Nov, 2016 the same order may kindly be set aside.*

*(b) The applicant may be permitted to alter/amend the application if required.*

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

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 29.12.2010 and was invalided out from service on 02.08.2013 (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, Meerut on 21.06.2013 assessed his disability '**NON ORGANIC PSYCHOSIS**' @40% 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 18.12.2013. The applicant preferred First Appeal which too was rejected vide letter dated 07.05.2015. The applicant preferred Second Appeal which too was rejected vide letter dated 03.11.2016. 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 invalidated 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 81 of Pension Regulations for the Army, 2008 (Part-I). Accordingly, the applicant was informed about the rejection/non-entitlement of disability pension. 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 29.12.2010, and the disease applicant was found to be suffering with in medical test first started on 19.03.2013, i.e. within three years of joining the service.

7. In the above scenario, we are of the opinion that since the disease has started in less than three 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 three 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 Yadavs 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 : 06 June, 2022

AKD/-