

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.C.T. 124 of 2025

No.13940516F Ex-Nk Sukhdeo Prasad

Vs.

Union of India &Ors.

For the Petitioner : Mr. Aniruddha Datta

For the Respondents : Ms. Rashmi Bothra,
Ms. Garima Raijada

Judgment on : 28th August, 2025

Supratim Bhattacharya, J.:

1. Heard the learned counsel for the petitioner and the learned counsel for the respondents.
2. The petitioner herein being the applicant before the Armed Forces Tribunal, Regional Bench, Kolkata had preferred an Original Application being O.A. 18/2022 and had prayed for the following :

“Relief(s) Sought :

(i) The impugned order, being Letter No. 13940516F/Pen/DP Corres dated 17 Dec 2021, issued from the office of Respondent No. 3 herein (part of Annexure – A-4 herein), be set aside as illegal and improper;

(ii) The applicant be held entitled to receive Invalid Pension/disability pension after condonation of shortfall of his qualifying service. Consequently, the respondent concerned be directed to condone the shortfall of his qualifying service and

thereafter pay Invalid Pension/disability pension to the applicant at rounded off rate of 50% for life w.e.f. the date next to his date of discharge;

(iii) The respondents concerned be directed to release the arrears of Invalid Pension/Disability pension within a specific period of time, failing which the applicant be held entitled to receive interest thereon at proper rate, from the date of order till the date of its actual payment;...”

3. In the said O.A. on 06.05.2022 the Armed Forces Tribunal (AFT), Kolkata passed the following :

“12. In the above judgment the Hon’ble Supreme Court also referred to Annexure I of Chapter IV of the Guide to Medical Officers (Military Pensions) 2002 – Entitlement: General Principles, which stated that *“certain diseases which may be undetectable by physical examination on enrolment include the mental disorders; epilepsy and relapsing forms of mental disorders which have intervals of normality, unless adequate history is given at the time by the member. The Entitlement Rules itself provide that certain diseases ordinarily escape detection including epilepsy and mental disorder, therefore, we are unable to agree that mere fact that Schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease was aggravated or attributable to Military Service.”* Therefore, the Hon’ble Supreme Court further observed that entitlement to disability pension should 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 Schizophrenia is presumed to be attributed to or aggravated by Military Service.

13. In view of the aforesaid, and accepting the view taken in the case of **Ex Cfn Narsingh Yadav** (supra) the OA being devoid of merit stands dismissed.”

4. The fact of the present case is that the petitioner initially was enrolled in the Indian Air Force on 28th August, 1974 and was discharged from service on 30th January, 1975 after serving for only 156 days. Thereafter, the petitioner was enrolled in the Indian Army in Army Medical Corps on 18th October, 1975 and was invalidated out of service on 4th November, 1984, on the account of suffering from Schizophrenia Psychosis. The petitioner was invalidated out of service with 20% disability for two years which was declared as not attributable to military service. Thus, total service tenure of the petitioner, by clubbing his services in the Air Force and Army comes to less than 9 years and 6 months.

Being aggrieved by the decision of discharge, the petitioner filed writ petition before the High Court of Patna in the year 1988, which was transferred to the High Court of Allahabad on the ground of jurisdiction. The petitioner through the writ *inter alia* had prayed for grant of disability pension.

On coming into force of the Armed Forces Tribunal Act, 2007, the writ petition pending before the High Court of Allahabad was transferred to the Armed Forces Tribunal, Regional Bench, Lucknow being Transferred Application (T.A.) No. 61 of 2010. The said T.A. No.61 of 2010 was ultimately disposed of on 26.05.2010, upholding the finding of the medical board which had assessed the disability at 20%. Taking

into consideration that the medical board is an expert body and its opinion is entitled to be given due weightage, value and credence, thereby coming to the conclusion that the decision of the medical board that the illness suffered by the petitioner is not attributable to military service was affirmed. Thereafter, the petitioner has made several representations and ultimately preferred the original application wherein the impugned order has been passed which is under consideration, i.e., in the year 2022.

5. In the second O.A., the applicant has prayed for disability pension among other reliefs sought for.
6. The learned counsel representing the petitioner has prayed for granting invalid/disability pension and has placed before this Court the Pension Regulations for the Army - 1961, Part-I, Regulations 125, 197 and 198. He further submits that the petitioner has been pursuing the matter since filing of the writ petition before the Patna High Court and there has not been any laches on behalf of the petitioner. He further submits that according to Regulation 125, there is a provision for condonation of deficiency in service for eligibility/qualifying service for reservist pension. By emphasising on Regulation 125 he has pleaded for granting invalid/disability pension to the petitioner.
7. The learned counsel representing the respondents has submitted that on the earlier occasion (dated 22.02.2022 O.A. 18/2022) the petitioner had prayed for disability pension which was not granted and therein without assailing the said order he has now come up praying for invalid pension among other grounds. The learned counsel has stressed upon

the issue that the tenure of service of the petitioner has not crossed 10 years or reached 10 years and there is shortfall of more than six months in the service of the petitioner. In addition to the above, she has further submitted that once again agitating for disability pension cannot be allowed in the present circumstance. Thereby she has prayed for affirmance of the order passed in the original application, by the Armed Forces Tribunal, Regional Bench, Kolkata.

8. Thus from the contention of the parties, it transpires that the issue is whether the petitioner is entitled to disability pension or invalid pension.
9. In this context it is to be stated that disability pension is granted where the person has been discharged on the ground of injury which is attributable to and aggravated by military service, but in this *lis* the issue of disability pension has already been decided against the petitioner by the Armed Forces Tribunal, Regional Bench, Lucknow in Transferred Application being T.A. No. 61 of 2010. The said order dated 26th May, 2010 passed by the Armed Forces Tribunal, Regional Bench, Lucknow has not been assailed and at this stage it cannot once again be agitated and considered.
10. In this circumstance, it is also to be stated that invalid pension is granted to those who are invalidated out due to a disability that is neither attributable to nor aggravated by service (NANA). The issue of invalid pension is to be considered keeping in mind the tenure of service which has been rendered by the petitioner. In this present case from the period of service provided by the petitioner in the Indian Army

in Army Medical Corps is from 18.10.1975 till 04.11.1984, which is less than 10 years, the minimum qualification of service which is required for grant of invalid pension under Regulation 198 of the Pension Regulations for the Army – 1961 (Part – I).

Now we take into consideration the Regulation 125 which has been placed before this Court on behalf of the petitioner, which states:

“Condonation of deficiency in service for eligibility to service/reservist pension

125. Except in case of:

- (a) an individual who is discharged at his own request, or
- (b) an individual who is eligible for special pension or gratuity under Regulation 164, or
- (c) an individual who is invalided with less than 15 years service, deficiency in service for eligibility to service pension or reservist pension or gratuity in lieu may be condoned by a competent authority upto six months in each case.”

11. From the said Regulation, it is apparent that this Regulation is applicable for condonation of deficiency in service for eligibility to service/reservist pension and not in case of invalid pension which is the moot contention herein.
12. So, from the aforesaid discussion it transpires that the petitioner has not completed the minimum period of qualifying service to be entitled to invalid pension.
13. In such circumstance, the impugned order dated 06.05.2022 passed in the Original Application being O.A. No. 18 of 2022 by the Armed Forces Tribunal, Regional Bench, Kolkata requires no interference.

14. Thus the Writ Petition being **W.P.C.T. No. 124 of 2025** is dismissed.
15. There will be no order as to costs.
16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

(Supratim Bhattacharya, J.)

(Madhuresh Prasad, J.)