**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.2)**

O.A NO. 289 of 2010

IN THE MATTER OF:
Ex. Rect. Rajender Singh Shekhawat .....APPLICANT
Through : Mr. N.L. Bareja, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS ...RESPONDENTS
Through: Mr. Anil Gautam, counsel for the respondents

CORAM:

HON'BLE MR. JUSTICE MANAK MOHTA, JUDICIAL MEMBER
HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

Date: 21.09.2011

1. The OA was filed in the Armed Forces Tribunal on 04.5.2010.

2. Vide this OA, the applicant seeks re-examination of original service records of medical of the applicant from the date of initial enrolment on 28.10.97 till the time he was invalidated out of service in June 1998. He also seeks that the directions of the Hon'ble High Court of Delhi passed in case of W.P.(C) No.7177/07 dated 16.12.2008 be complied with. The applicant further seeks reinstatement in service. Thus, quashing of the Appellate Medical Board proceedings which relates to generalised seizure to which he was invalidated out of service on 27.6.98 as non-attributable and non-aggravated by service. Consequently, he seeks disability pension. He also seeks setting aside

of the order dated 07.1.2010 issued by respondent No.4 with regard to re-instatement (Annexure-P-1). He also seeks all consequential benefits on being reinstated and/or entitlement to disability pension. The applicant has also asked for compensation for the harassment caused to him and award of cost in his favour.

3. The brief facts of the case are that the applicant was enrolled in the Army on 28.10.97. He was found fit at the time of his entry to the Armed Forces. During the training, the applicant was once again made to undergo a medical examination as laid down in the procedures. He was found fit for training.

4. While participating in an exercise in the 4th week of basic military training, the applicant suffered “Hair Line Fracture” on his right leg for which he was admitted into MH Saugor on 13.12.1997 and was diagnosed of a case of STRESS FRACTURE (RT) TIBIA. He was discharged from hospital on 03.01.1998 (Annexure-3) with recommendation for grant of three week’s of sick leave. On expiry of sick leave, the applicant was admitted in the hospital for review where he was declared fit and sent to the Centre for continuation in the training.

5. On 27.2.1998 while doing Monkey Crawling Exercise lost his grip and fell flat on the ground as a result of which he suffered head

injury and was unconscious and was thus admitted into the MH Saugor. He remained admitted for 15-20 days.

6. After that he was transferred to MH Lucknow for further advice and treatment. Thereafter, he was sent back to MH Jabalpur and then to MH Saugar, where his medical category was down graded to Category “EEE” by the medical board on the basis of explicit opinion of the specialist that since the applicant was a recruit and undergoing training, he should be invalidated out of service on the basis of being diagnosed to be a case of “Generalised Seizure”.

7. A Court of Inquiry (COI) was alleged to be held in accordance with the rules on his falling from the Monkey rope exercise. Consequent to being down graded to Low Medical Category EEE, the applicant was invalidated out of service on medical grounds under Army Rule 13(3)(III)(iii) on 27.6.1998.

8. The case of the applicant for disability pension was rejected by the CCDA(P) Allahabad vide their letter dated 12.6.99.

9. The applicant was not supplied with the copy of COI and therefore, he was not in a position to challenge the rejection of his disability pension from CCDA(P) (Annexure A-5).

10. The applicant preferred an appeal against the order of rejection of disability pension which was rejected by respondent No.1 in a routine manner vide their letter dated 08.10.2000 received under letter

of 06.11.2000 from respondent No.4 on the grounds that the disability suffered by the applicant was neither attributable nor aggravated due to military service. Though, disability assessed was 20% for two years when he was medically invalidated (Annexure A-6).

11. The applicant filed a **W.P.(C) No.7177/07** before the Hon'ble High Court of Delhi. The Hon'ble High Court in its order on 16.12.2008 directed the respondents to hold an Appeal Medical Board. Consequently, on 23.2.2009 a re-survey medical board was held. On 29.1.2009, the Medical Board declared the invaliding disease as neither attributable to nor aggravated by the military service.

12. Ld. Counsel for the applicant argued that under **CHAPTER VIII of Regulation for Medical Services 1983 (Para 423) (c)** clearly states as under:-

> *"(c) The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an*

individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the Armed Forces. However, if medical opinion holds for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will be deemed to have risen during service."

13. Therefore, since the applicant had been recruited after complete medical examination and also that he was subjected to further medical examination on reporting to the training centre, any disease that was not detected earlier and surfaced during the training should be considered as attributable to service. Ld. counsel for the applicant further submitted that his client is suffering from disability of 20% and therefore, was entitled to pension. He further quoted the entitlement rules **Appendix -2** which refers to **Regulation 48, 173 and 185 as Entitlement Rules for Casualty Pensionary Awards, 1982** in which para 4 states as under:-

"4. Invaliding from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and

are discharged because no alternative or Shelter Appointment can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service."

14. Ld. counsel for the applicant further argued that the COI was not produced by the respondents nor a copy of the same was handed over to the applicant but the injury report clearly states that he received the injury while undergoing training i.e., "Monkey Rope Exercise". As such, the injury which resulted in the applicant being unconscious and sent to the hospital while doing training should be declared as attributable to service.

15. Ld. Counsel further argued that a close scrutiny of the re-survey/appeal medical board held on 23.2.2009 state "to continue care and follow up under AMA". It means that the injury suffered was attributable to the service.

16. Ld. Counsel for the applicant further argued that the impugned order dated 07.1.2010 rejecting his case for disability pension has been passed without application of mind and is not a speaking order and has also not been signed by the competent authority, therefore, the impugned order needs to be set aside.

17. Ld. Counsel for the applicant further stated that from a cursory glance of the original documents it is seen that when the individual was to be invalidated out from the service, there is a marking in which STRESS FRACTURE (RT) TIBIA has been cut and amended to 'generalised seizure' which shows that the consideration of the Board was not proper. In support of his contentions, Ld. Counsel for the applicant cited the judgment dated 28.10.1009 passed by the AFT in **TA No.48 of 2009 in the matter of Nakhat Bharti and Ors. Vs Union of India & Ors.**

18. Ld. Counsel for the respondents argued that there is no record either in the medical board proceedings or in his personal dossier to suggest that the individual sustained head injury through 'Monkey Rope Exercise" during training. But only mention of 'generalised seizure' is reflected in the report given by the medical board. In the para-III of the report which is supposed to be signed by the Commanding Officer nothing is mentioned against the injury report nor is there any averment with regard to COI. On the other hand, the COI was conducted when the individual suffered from STRESS FRACTURE (RT) TIBIA left. By simple logic, it explains that the second time when the individual was admitted to the hospital on 27.2.1998, the cause was not that of any injury while during training. Had it been otherwise, either in the COI or at least in the report of the

medical board, it has been endorsed by the respective authorities that the individual had suffered heard injury during training.

19. Ld. Counsel for the respondents further stated that the Medical Board has given a detailed explanation as to why in this case the invaliding disease has not been made attributable or aggravated by the service. He drew our attention to the remarks of the Medical Board which reads as under:-

> *"The onset of the ID was in Feb 98. The ID the absence of trauma, infection, tumor or metabolic disorder is an idiopathic disorder with no service related cause and hence the ID is conceded as not attributable to mil service. The onset of the ID was in a peace station and he continued to serve in peace till his IMB and there was no close time association of onset with FD/Ops/HAA tenure. Hence ID is conceded as NANA. The ID could not be detected at the time enrolment as the indl was not symptomatic at the time. The ID being an episodic disorder. The indl remains normal in-between attacks. (Ref para 33 Chapter VI GMO Mil Pens-2002 and amendment-2008)."*

20. Ld. Counsel for the respondent further stated that the same Medical Board has also dependent on the opinion of the medical specialist which reads as under:-

> *"1. The individual has been documented to have seizures while under training as a recruit in 1998.*

2. His being seizure free after release from service in Jun 1998, is as per history given by the individual. However, this cannot be verified by any means.

3. Epilepsy is a disorder which is episodic in nature. Clinical evaluation in between seizure episodes along with electro-encephalography, CT Scan and MRI of brain can be normal in 40-50% cases and does not rule out the disorder.

Reference:

(a) Neurological Therapeutics Principles and Practice by J Noseworthy, 2nd edn. Chap 322, para 5.
(b) Neurology in clinical practice by Walter Bradley, 4th edn, chp 35, page 68, para 4.
(c) Principles of Neurology by Adam Victor, 8th Edn, Chap 16, page 283, para 7.

4. Even if he has an epilepsy with no clear identifiable cause, the risk of seizure recurrence shall remain.

5. Thus the individual cannot be considered fit for military duties, as seizure recurrence during active duties can result in grievous injuries.

(R K Anadure)
Lt Col
MD (Med), DM (Neuro), NIMHANS
Cl. Spl (Med & Neurologist)"

21. Ld. Counsel for the respondents further clarified that the applicant was being reviewed for STRESS FRACTURE (RT) TIBIA by the Medical Board consequent to a clerical mistake which had to

be rectified since the invaliding disease was held has 'generalised seizure'.

22. Having heard both the parties at length and having examined all the documents in original, we are of the opinion that the applicant was discharged on medical grounds consequent to 'generalised seizure'. He was medically discharged after duly constituting Invaliding Medical Board. Consequent to his representation and his writ filed in the Hon'ble High Court of Delhi and orders dated 16.12.2008, he was sent for re-survey/Appeal Medical Board which was held on 23.2.2009.

23. In the Appeal Medical Board, the medical specialist has given a detailed assessment after due analysis and finding that the individual had though does not have the history of invaliding disease and that he has not suffered any episodes since the last 10 years, the invaliding disease did get triggered during the training. But there is no mention of applicant having undergone any physical exercise or training or sustained any injury during the training which could have caused the 'generalised seizure'. However, the Appeal Medical Board studied the case of the applicant in detail and has given a detailed order which declares that the applicant is having a invaliding disease and is unfit for military duties. It has also opined that the background to the seizure episodes do not indicate that it is

consequent to military service or aggravated by the military service. The detailed order of the Medical Board reads as under:-

> *"The petitioner had been invalided out from service in June 1998 for Generalised Seizure after two seizure episodes had been recorded while in service. His being seizure free after his invalidment in Jun 1998 is as per history given by the petitioner and the same cannot be verified. Besides Epilepsy is an episodic disorder and some individuals are known to remain seizure free for prolonged periods of several years. Clinical evaluation in between seizure episodes alongwith EEG, CT scan, MRI of brain can be normal in 40-50% cases and does not rule out the disorder. In view of the above the petitioner is not medically fit for reinstatement as per the existing regulations on recruitment."*

24. In view of the foregoing, we are of the opinion that the recommendations of the Appeal Medical Board cannot be disregarded. Our conclusion finds support from the judgment given in the case of **2006(1)SLR 51, Controller of Defence Accounts Vs S.B. Nair.** The relevant para is quoted as under:-

> *"10. In Union of India and Anr. Vs Baljit Singh, 1996(II) SCC 315 this Court had taken note of Rule 173 of the Pension Regulations. It was observed that where the Medical Board found that there was absence of proof of the injury/illness having been sustained due to military service or being attributable*

thereto, the High Court's direction to the Government to pay disability pension was not correct."

25. There is no evidence or indication which can establish that there is a close link or even a remote link with severe trauma which could have triggered off the invaliding disease.

26. Even the findings given in Armed Forces Tribunal judgment dated 28.10.2009 given in case of **Nakhat Bharti and Ors. TA No.48 of 2009** (Supra) supports the contention that when cogent reasons have been provided therein, there is no reason to overturn the decision of the Government which was passed on 07.01.2010. The decision of the Competent Authority dated 07.01.2010 is a letter communicating the order as passed by the Government of India.

27. In view of the above, no interference is required in any of the orders. The OA is dismissed. No order as to costs.

(M.L. NAIDU)
(Administrative Member)

(MANAK MOHTA)
(Judicial Member)

Announced in the open Court
on this 21st day of September, 2011.