

OA 1586 of 2018

Date: **02nd** May, 2023

ORDER

2. The applicant was enrolled in the Indian Army on 16.03.1981 and invalided out from service on 14.04.1983 after serving for approximately 02 years and 28 days of qualifying service. The Release Medical Board dated 17.03.1982 held that the applicant was fit to be invalided from service in composite low medical category for the disabilities - (i) GENERALISED EPILEPSY

@ 15-19% for two years while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by military service (NANA).

3. The claim of the applicant for grant of disability pension was rejected on 11.04.1984 and the same was communicated to the applicant vide letter no. G-3/84/1534/V stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service and does not fulfil the conditions.

4. After a lapse of more than 34 years, a handwritten application dated 28.12.2016 for disability claim was submitted by the applicant, which was rejected vide Letter No. P/14243021/DP-6/NER dated 28.12.2016. Subsequently, another handwritten application was submitted by the applicant the next day on 29.12.2016, which was again rejected by the Respondents vide Letter No. 5056/NER/LIB/ESM dated 31.01.2017. Thereafter, a Legal Notice-cum-Representation dated 21.11.2017 was preferred by the applicant justifying his claim for disability pension but the same was rejected by the respondents vide Letter No. P/14243021/DP-4/NER dated 11.12.2017 Aggrieved by

the aforesaid rejection, the applicant has approached this Tribunal.

5. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, Learned Counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Army at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

6. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 82 of the Pension Regulations for the Army, 2008 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @ 20% or more.

7. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as "neither attributable to nor

aggravated" by Army service and not connected with the Army service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension.

8. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability was assessed to be 15-19% which is less than the bare minimum for grant of disability pension in terms of Regulation 82 of the Pension Regulations for the Army, 2008 (Part-I). Now, another question that arises in the above backdrop is whether disability suffered by the applicant i.e. GENERALIZED EPILEPSY was attributable to or aggravated by military service.

9. Guidelines for assessment of Psychiatric Disorder have been spelt out in the Guide to Medical Officers (Military Pension), 2002 which elaborates in detail the factors which impinge on Attributability and Aggravation of Psychiatric Disorders in Para 54 which are reproduced below:

54. Mental & Behavioural (Psychiatric) Disorders

Psychiatric illness results from a complex interplay of endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders (psychosis & Neurosis) including substance abuse disorders. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.

The concept of attributability or aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case.

(a) Attributability will be conceded where the psychiatric disorder occurs when the individual is serving in or involved in :-

(i) Combat area including counterinsurgency operational area

(ii) HAA Service

(iii) Deployment at extremely isolated posts

(iv) Diving or submarine accidents, lost at sea

(v) Service on sea

(vi) MT accidents involving loss of life or Flying accidents (both as flier and passenger) in a service aircraft or aircraft accident involving loss of life in the station

(vii) Catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies)

(b) Attributability will also be conceded when the psychiatric disorder arises within one year of serious/multiple injuries (e.g. amputation of upper/lower limb, paraplegia, quadriplegia, severe head injury resulting in hemiplegia or gross neuro cognitive deficit which are themselves considered attributable to military service. This includes Post Traumatic Stress Disorder (PTSD).

(c) Aggravation will be considered in Psychiatric disorders arising within 3 months of denial of leave due to exigencies of service in the face of:

(i) Death of parent when the individual is the only child/son

(ii) Death of spouse or children

(iii) Heinous crimes (e.g. murder, rape or dacoity) against members of the immediate family

(iv) Reprisals or the threat or reprisals against members of the immediate family by militants/terrorists owing to the fact of the individual being a member of the Armed Forces

(v) Natural disasters such as cyclones/earthquakes involving the safety of the immediate family.

(vi) Marriage of children or sister when the individual is the only brother thereof and specially if their father is deceased.

(d) Aggravation will also be conceded when after being diagnosed as a patient of psychiatric disorder with specific restrictions of employability the individual serves in such service environment which worsened his disease because of the stress and strain involved like service in combat area including counterinsurgency operations, HAA, service on board ships, flying duties.

(e) Attributability may be granted to any psychiatric disorder occurring in recruits and results in invalidment from service only when clearly identifiable severe stressors including sexual abuse or physical abuse are present as causative factor/factors for the illness.

10. From the material placed on record, there is no evidence to find even a remote causal link to any service related trauma which can be considered to be a contributory factor to the mental condition of the Applicant.

11. Before coming to a considered opinion, it would be pertinent to refer to the judgement of the **Hon'ble Apex Court in Civil Appeal No 7672 of 2019 (Diary No 27850 of 2017), decided on 03/10/2019, in the case of Ex Cfn Narsingh Yadav Vs UOI & Others**, wherein the Apex court had upheld the decision of **AFT, Regional Bench, Lucknow in OA No. 235 of 2010 dated 23.09.2011** denying Disability Pension to a soldier medically boarded out with Schizophrenia. The Supreme Court was pleased to opine-

"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 Schizophrenia is presumed to be attributed to or aggravated by military service.

21. Though, the opinion of the Medical Board is subject to judicial review, the Courts are not possessed of expertise to dispute such a 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.

22. Thus, we do not find any merit in the present appeal, accordingly, the same is dismissed".

12. Moreover, the Supreme Court Judgement in **Cfn Narsingh Yadav (supra)** amplifies that mental disorders which cannot be medically detected during the enrolment process cannot be claimed to be attributable to rigours of service at a later stage, and observed as under:

"Relapsing forms of mental disorders which have intervals of normality and Epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member".

13. Regarding the issue of Primacy of the Medical Board, the Supreme Court in its judgement in **UoI vs Ravinder Kumar in Civil Appeal No. 1837/2009 decided on 23.05.2012**, has explicitly viewed that :

"5. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury suffered by him bears a causal connection with military service.

6. In the instant case, the Medical Board has opined as under:-

"ID. Generalised Tonic Seizure. MA opined that ID is genetic in origin, not connected with service.

Thus in view of the above, it is evident that the ailment with which respondent has been suffering from is neither aggravated nor attributable to the Army Service".

14. Applying the above parameters to the case at hand, we find no infirmity in the opinion of the Medical Board and are of considered opinion that the disability GENERALISED EPILEPSY @

15-19% cannot be attributed to service and hence, the relief asked for is not sustainable.

15. Therefore, in our considered view, the OA is devoid of merits.

16. Consequently, the OA 1586/2018 is dismissed.

17. Pending application(s), if any, also stands disposed of.

18. No order as to costs.

Pronounced in the open Court on 02 day of May, 2023.


(ANJANA MISHRA)
MEMBER (J)


(C.P. MOHANTY)
MEMBER (A)

/ps/