

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 625 of 2019
with
M.A. No. 1204 of 2019

In the matter of :

Ex Sep Rameswar Dayal

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri A.K. Trivedi, Advocate

For Respondents : Shri Waize Ali Noor, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

M.A. No. 1204 of 2019

Vide this application, the applicant seeks condonation of 13152 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

MA stands disposed of.

O.A. No. 625 of 2019

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is aggrieved by denial of disability pension on the basis of the assessment and opinion of the Medical Board that the disability of the applicant is a constitutional disorder which is 'neither attributable to nor aggravated by military service (NANA)'.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 03.05.1974 and was invalided out from service in low medical category 'EEE' on 05.04.1983 under Army Rules 13(3) III (iii). The Invaliding Medical Board assessed the applicant's disability i.e. AFFECTIVE PSYCHOSIS @ 60% for two years, and held the same as 'neither attributable to nor aggravated by military service (NANA)', based on which, disability pension has been denied to the applicant. Hence, the present OA.

3. The initial claim of the applicant was rejected by PCDA(P) vide letter dated 19.04.1984. The same was communicated to the applicant vide letter dated 22.05.1984 with an advice to file an appeal against the rejection of the

disability pension within a period of six months. However, the applicant preferred an appeal on 12.07.2018. When nothing was heard from the respondents in reply, the applicant has filed this OA.

4. Learned counsel for the applicant submitted that the applicant, at the time of enrolment, was fully fit medically and physically and no note was made in his medical documents that he was suffering from any disease at the time of enrolment. He further submitted that during service, the applicant was detected with the disease Neurosis and remained under treatment in the military hospital. Consequently, due to the disability 'Neurosis' (Affective Psychosis) in June, 1980, he was recommended to be invalided out from service in low medical category EEE. Relying upon various judgments of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India and others** [(2013) 7 SCC 316], **Union of India & Ors. Vs. Rajbir Singh**, (2015)12 SCC 264 etc., wherein it was held that an army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the

time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions and thus the disability was caused due to stress and strain of service and in **Sukhvinder Singh Vs. Union of India and Ors. [2014 STPL (WEB) 468 SC]**, it was held that whenever a member of the armed forces is invalided out of service, it is to be assumed that his disability was to be considered as more than 20% and the same would attract the grant of fifty percent of disability pension. Learned counsel placed various orders passed by the Tribunal granting invalid pension. Hence, he pleaded that the applicant is entitled to the disability pension.

5. Learned counsel for the respondents, on the other hand, submitted that as the applicant's disability was conceded by IMB, which is an expert body, as neither attributable to nor aggravated by military service being constitutional disorder, the claim of the applicant for disability pension was rejected in terms of Para 173 of the Pension Regulations vide letter dated 19.04.1984. Learned counsel submitted that the applicant filed an appeal on

12.07.2018 after about 34 years and prayed that the applicant was rightly denied the disability pension and, therefore, the OA deserves to be dismissed.

6. We have heard the learned counsel for the parties and have perused the record.

7. In this case the applicant was invalided out from service on 05.04.1983 due to his disability 'Affective Psychosis', which has been assessed @ 60% for two years and opined by the IMB as neither attributable to nor aggravated by military service being constitutional disorder thus not related to service.

8. We may refer to Annexure I to Chapter IV of the Guide to Medical Officers (Military Pensions), 2002 – "Entitlement: General Principles" which provide for that certain diseases which may be undetectable by physical examination on enrolment including 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 cannot be detected including epilepsy and mental disorders. Hence, it is very difficult to presume that

the disease of the applicant is attributable to service as the same arose during the service and was not detected at the time of joining the service.

9. It may be useful to refer to Para 54 of the Guide to Medical Officers (Military Pensions) 2002 amendment 2008 (hereinafter referred to as 'GMO (MP) 2008'), which provides for details of the factors which have a bearing on attributability and aggravation of psychiatric disorders, which read as under :

"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, 41 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 of gross neurocognitive 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 of 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 aforesaid, it is clear that the disability in question is a psychiatric disease caused by a complex interplay of genetic vulnerabilities and exogenous stress factors. Attributability and aggravation are conceded on the basis of factors mentioned in the aforesaid Para. In his case, onset of the disability was while he was posted to a peace station and after onset he served in peace station till his

invalidment from service. There is no material to show that the applicant suffered the disability because of any factors mentioned in the aforesaid Para 54 of the GMO (MP) 2008.

11. Regarding the issue of primacy of the medical board, the Hon'ble Supreme Court in its judgment in the case of **Union of India Vs. Ravinder Kumar [Civil Appeal No.1837 of 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."

12. The Hon'ble Supreme Court in the case of **Ex Cfn Narsingh Yadav Vs. Union of India & Ors. [(2019) 9 SCC 667]**, held as under :

"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.

Further, it was held that :

“.....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.”

13. The Hon'ble Supreme Court in the case of **Union of India Vs. Ex. Sep. R. Munusamy [2022 SCC OnLine SC 892]** held that “25. ...what exactly is the reason for a disability or ailment may not be possible for anyone to establish. Many ailments may not be detectable at the time of medical check-up, particularly where symptoms occur at intervals. Reliance would necessarily have to be placed on expert medical opinion based on an in depth study of the cause and nature of an ailment/disability including the symptoms thereof, the conditions of service to which the soldier was exposed.”

14. From the above, it is clear that the disability of the applicant does not fall within the scope of attributability to military service of only 8 years as the summary of the case

shows that he was mentally disturbed due to his personal/domestic life and hence we are of the view that there is no causal connection in the matter and the IMB has rightly considered the disability as neither attributable to nor aggravated by service and not connected with service. Further, if the behaviour of a soldier is abnormal and is hampering his progression in service, then the respondents as employers have every right not to retain in service. Army is a combat force and mental and physical fitness both are a must for a soldier. Since the disability of the applicant is of a psychiatric nature and could not have been detected at the time of enrolment, we do not find any reason to hold the same as attributable to or aggravated by military service, particularly when it has been detected within a period of only six years of service.

15. In view of the above discussion and judicial pronouncements, the OA stands dismissed being devoid of merit.

16. Pending MAs, if any, stand closed accordingly. There is no order as to costs.

Pronounced in open Court on this 28/10 day of
October, 2023.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HARIZ]
MEMBER (A)

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