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

OA 1283/2022 WITH MA 324/2024 (OA 43/2017 RB, MUMBAI)

Ex NC(E)(U/T) Rahul Vishnu Kakde ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Ravi Kumar, Advocate
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM :

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

ORDER

Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application seeking grant of disability pension.

2. The applicant was recruited in the Indian Air Force on 07.02.2013 and invalided out from service on 31.07.2013. Through his two-fold contentions, the applicant submits that he was not issued with Show Cause Notice prior to his discharge, and thus, his discharge is illegal. Alternatively, for the purpose of invalidation, he is entitled to disability pension. Per Contra, it is submitted by the respondents that the applicant was not attested under Rule 15(2)(k) of Air Force Rules, 1969, wherein the Commanding Officer can discharge an individual, and in this case, the applicant was found to be medically unfit by the Invaliding Medical Board, and thus, there is no requirement of Show Cause Notice. Simultaneously, disability of the applicant was existing at the enrolment stage, and that his disability was held to be NANA by the Invaliding

Medical Board, and therefore, the applicant is not entitled to disability pension.

3. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the applicant was invalided out on the recommendation of the duly constituted Invaliding Medical Board, and hence, there is no requirement of any show cause notice to be issued prior to discharge, which is otherwise a procedure mandatorily to be followed wherein an individual is being discharged on the disciplinary grounds, but herein the applicant has been held to be medically unfit for retention in service, and therefore, we are of the opinion that the prayer of the applicant for reinstatement is misconstrued.

4. Proceeding to adjudicate on attributability, we find it pertinent to refer to the 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008, which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof provide as under:-

> *"6. Causal connection:*
> *For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.*
>
> *7. Onus of proof.*
> *Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.*
>
> *10. Attributability:*
>
> *(a) Injuries:*
> *In respect of accidents or injuries, the following rules shall be observed:*
> *(i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service,*

(provided a nexus between injury and military service is established).
(ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.

(b) Disease:
(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-
(a) that the disease has arisen during the period of military service, and
(b) that the disease has been caused by the conditions of employment in military service.

(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.
(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability 'should be conceded on the basis of the clinical picture and current scientific medical application.
(iv) When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.

11. Aggravation:
A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High. Altitudes etc."
(emphasis supplied)

5. A cursory look at the aforesaid para would make it clear that for causal connection to be established between the disability and the military service, it has to be proved that the conditions of employment in military service have led to the causation of disability. To ascertain the same, we find it pertinent to refer to the recommendation of the Invalid Medical Board, by Col Rajan Kapoor, Sr. Adv. Medicine & Hematology dated 20.04.2013 and reproduced as under:

"Patient is an incidentally detected case of homozygous sickle cell disease. He has no h/o any crisis. Presently asymptomatic. However he would

require life long sheltered appointment and follow up. Being a recruit it is recommended that he is to be invalidated out of service in Category - P5."

6. Examining the medical records, we observe that it has been recorded in the Statement of the Case of the applicant that he reported SMC for severe pain in the back and both legs on 12.02.2013, that is 5th day of him reporting for training, and he was admitted at MH Belguam on 12.02.2013 and subsequently, sent on sick leave. Later, he was readmitted at CH (SC) Pune on 06.04.2013, wherein it was recommended by the Hematologist that he be invalidated out from service.

7. On an examination of the aforesaid opinion of the Classified Specialist of the Medical Board, we find that the disability may have been present in a quiescent stage, and therefore, could not have been detected by the Recruiting Medical Officer, and the same could have been a genuine error of observation, being a borderline case, wherein due to paucity of time, and limited facilities, it is not feasible to conduct a thorough medical examination, and thus, had this been not the case, the disability could have been detected at the initial stage itself.

8. It is pertinent to note that the applicant was enrolled on 07.02.2013 and the medical issue arose on 12.02.2013 and the applicant was found to have been suffering from the disability within 5 days of his enrollment. Not to lose sight of the observations of Medical Board vide Part - V which reads to the effect:

" Individual reported for training on 07 Feb 13 and the onset is 12 Feb 2013. As this disease is congenital and Hereditary in nature. He was treated at MH Belgaum for Jaundice and found to have abnormal cell morphology in PBS. He was evaluated at

CH (SC) Pune for microcytic hypochromic anaemia by hematologist. There he was diagnosed as a case of Sickle cell anaemia.
The disability is neither attributable nor aggravated as per Para 03 Chapter VI of GMO (Mil Pension) 2008."

9. It is relevant to observe that in the instant case, the disability of the applicant cannot have arisen in 5 days of military training, and thus, it can be presumed that it existed before entering into the service and that the primary/initial medical examination carried out at the time of enrollment is of a routine nature, and is not exhaustive in nature so as to enable every medical detection with respect to an individual, and therefore, a single person being Recruiting Medical Officer cannot be said to have an expert in every dimension of medical field, and that the said disability might remain dormant usually but manifest during training period.

10. Thus, in absence of any evidence to the effect that the disability has been attributed or worsened due to military service, we cannot subscribe to the arguments of the applicant that any disability presumed to have arisen in service has to be held attributable, especially when the disability has arisen within a month of enrollment, with a less than one month of training not establishing any causal connection of the causation of the disability to the military service.

11. We find it pertinent to refer to the Medical Form for the Initial Medical Board which is held for the initial medical assessment of the ORs, and the same is reproduced herein:

1. Service No..... 2. Name.....

3. Father's Name.....4. Date of birth .....

5. Apprent age..... 6. Army/Navy/Air Force .....

7. Permanent address :- Village -

Post Office_____ Tehsil _____

District _____

8. Identification Marks :-
(1) _____
(2) _____

9 Relevant Family History :- _____

10. Past medical history : specially of fits _____

11. Eyes

	Right	Left	CP
(a) Without Glass			
(b) With Glass			
(c) Near vision		NORMAL	

12. Upper limbs and locomotive system
(a) Upper Limbs _____
(b) Locomotive _____NAD_____

13. Hearing
(a) Right Ear :
(b) Left Ear :
© Any evidence of otitis media - Nil

14. Physical Development
(a) Height without shoes.....CMS As obtained from RO
(b) Weight.....KGs

15. Respiratory System
(a) Chest Measurement
(i) Full expiration .....CMS As obtained
(ii) Range of expansion .....CMS from RO

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16. Genito Urinary System
Urine (a) Albumen .....
(b) Sugar .....
© Other abnormalities. .....

17. Any Evidence of skin/venereal disease

18. Cardio-Vascular System
(a) Pulse
(b) B.P. (if necessary)

19. Central Nervous System -

20. Abdomen – 21. Liver - 22. Spleen –

23. Hernia –

24. Teeth .....:..... (a) No. of dental points .....
(b) Condition of Gums

25. Mental Capacity and emotional stability: -
(a) Speech
(b) Evidence Suggesting

26. Slight – Defects not sufficient to cause Rejection

27 Found fit in medical category –

Place.....

Date .....

Recruiting Medical Officer

*(Medical examination at the time of recruitment is not exhaustive and may miss some hereditary, congenital, constitutional, sub clinical diseases, which may manifest later in life.)

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12. It is important to observe from the aforesaid Medical Form that the primary medical examination conducted at the time of enrolment of PBORs is not a rigorous medical examination procedure as followed during the Cat/Re-Cat Medical Boards or for that matter RMB/IMB, and that any disability which can escape the initial medical examination cannot be used as a tool to claim invalid pension even without rendering service of even one month to showcase any relation of invalidation or any link whatsoever to the military service. It is pertinent to record that just for the sole purpose a disability escaped the detection of the Initial Medical Examination, which could have been a genuine error on the part of the Recruiting Medical Officer, does not ipso facto make an individual entitled for Disability Pension.

13. We find resonance in the observations made by Hon'ble Supreme Court in ***Secretary, Ministry of Defence and others*** Vs ***A.V.Damodaran (dead) through LRs and others*** [(2009) 9 SCC 140], which clearly brings out the following principles with regard to primacy of medical opinion have been laid down:-

> *8. "When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medial category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invalidating medical board. The said release/invalidating medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same, they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is*

impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/recommendations on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and, of course, the physical examination of the individual.

9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the manner for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."

14. With the issue of primacy of medical opinion no longer res integra as held by Hon'ble Supreme Court in ***Ex CFN Narsingh Yadav*** Vs. ***UoI*** (Civil Appeal No. 7672 of 2019), we must reiterate that we are not medical specialists to scrutinize the opinion of medical boards, and it would not only be beyond our jurisdiction but also hazardous if this Court were to examine the accuracy of such expert opinion, based on competing medical opinions. The scope of judicial review does not entail the Court embarking upon such misadventures. As far as judicial review of decisions based on medical expert opinion is concerned, there is no doubt that wide latitude is provided to the executive in such matters and the Court does not have the expertise to appreciate and decide on merits of medical issues on the basis of divergent medical opinion.

15. In view of the aforesaid analysis, we are of the opinion that the aforesaid case lacks merit and hence, is liable to be dismissed.

16. Consequently, the present OA 1283/2022 is dismissed.

17. No order as to costs.

18. Pending miscellaneous application, if any, stands disposed of.

Pronounced in the open Court on 9th day of December, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C. P. MOHANTY]
MEMBER (A)

Akc