COURT No. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

117.

OA1449/ 2016 WITH MA 1092/2016 AND MA 707/2017

Ex EAP-3 Mohammad Ahsan Imtiaz ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. V Pattabhi Ram, Advocate

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

ORDER
12.02.2024

MA 1092/2016 AND MA 707/2017

Keeping in view the order dated 09.11.2016 passed in OA 1449/2016. MA 1092/2016 has been rendered infructuous. The applicant has filed a fresh MA 707/2017 and keeping in view the averments made in this application and in the light of the decision in ***Union of India and others*** *Vs.* ***Tarsem Singh*** (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 1449/2016

3. Invoking the jurisdiction of this Tribunal under

Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability pension.

4. The applicant was enrolled in the Indian Navy on 10.08.1972 and invalided out from service on 16.03.1983 after serving for approximately 10 years of qualifying service. The Invalid Medical Board dated 06.01.1983 held that the applicant was fit to be discharged from service with disability - GENERALISED EPILEPSY @ 30% for 2 years, with the statement of parents that the disability existed before joining the Armed Forces vide Point 3 of Part-I Personal Statement. Furthermore, 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.

5. 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 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".*

6. 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".***

7. 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 prayer seeking grant of disability pension is not sustainable.

8. However, with respect to the alternate oral prayer made by the Ld. Counsel for the applicant, keeping in view that the mandatory requirement of minimum 10 years service for grant of invalid pension has been dispensed with vide Govt. of India, Ministry of Defence letter No. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, and subsequently, the stand taken by this Tribunal in ***Lt. A.K. Thapa v. UoI [OA 2240/2019]*** vide its judgment dated 07.07.2023 and judgement dated 11.03.2022 in ***Ex Rect Chhote Lal v. UoI & Ors.*** [OA 368/2021], wherein the

requirement of the Armed Forces Personnel to be permanently incapacitated from civil re-employment as well (apart from permanent incapacitation from military service) for the grant of the Invalid pension in terms of the Govt. of India, Ministry of Defence letter No. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, and the cutoff date for applicability has been held to be wholly arbitrary and unconstitutional and violative of Article 14 and Article 16 of the Constitution of India and the said requirement has thus been set aside, we see no reason not to allow the prayer of the applicant with regard to the grant of invalid pension.

9. Therefore, in our considered view, the OA deserves to be allowed to the extent of the grant of invalid pension.

10. Accordingly, we direct the respondents to grant invalid pension to the applicant from the date of invalidment i.e. 16.03.1983. However, the arrears shall be restricted to three years prior to the date of filing of OA (26.10.2016) keeping in view the law laid down in the case of ***Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649].***

11. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four

months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

12. No order as to costs.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

Ps
OA 1449/2016