

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

O.A. No. 1767 of 2019

with

M.A. No. 2669 of 2019

In the matter of :

Ex Cfn Manoj Kr. Mishra

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Manoj Kr. Gupta, Advocate

For Respondents : Major A.R. Subramaniam, OIC, Legal Cell

CORAM:

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

ORDER

M.A. No. 2669 of 2019 :

Vide this application, the applicant seeks condonation of 12910 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 accordingly.

O.A. No. 1767 of 2019 :

The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who is aggrieved by the impugned order dated 30.09.2019 (Annexure A1) replying to Legal Notice dated 21.08.2019 of the applicant rejecting the claim for disability pension for the disability 'Immature Personality' from the date of his discharge from service with the benefit of rounding off and also with arrears and interest.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 28.09.1972 and he was invalided out from service with effect from 16.08.1983 being in low medical category 'EEE'. The Invaliding Medical Board (IMB) held in May, 1983 assessed the disability of the applicant 'IMMATURE PERSONALITY' @ 20% for 2 years and held the same as 'neither attributable to nor aggravated by Military service (NANA).

3. Initial claim for disability pension of the applicant was rejected by the PCDA (P), Allahabad vide letter dated 19.10.1983 and the said decision was communicated to the applicant vide letter dated 12.11.1983 with an advice to

prefer an appeal within six months, if need be. Against this, the applicant preferred the first appeal dated 20.12.1983. The same was processed to GoI, MoD through PCDA(P), the Appellate Committee on First Appeal (ACFA) vide letter dated 30.08.1985. Thereafter, the applicant submitted a petition dated 25.12.1985 for grant of disability pension which was also rejected vide letter dated 24.09.1986. The applicant then submitted an application dated 05.03.2017 which was suitably replied to by the respondents vide letter dated 06.06.2017. Thereafter, the applicant submitted a Legal Notice dated 21.08.2019 for grant of invalid pension and disability pension which was also replied to by the respondents vide letter dated 30.09.2019 rejecting the same. Aggrieved by this, the applicant filed the present OA for grant of disability as well as service element of pension.

4. Learned counsel for the applicant submitted that the applicant was found medically fit, mentally and physically at the time of his enrolment and there was no note in his service documents with regard to him suffering from any disability at that time. He further submitted that the

applicant was invalided out from service on 16.08.1983 due to the disability aggravated by service because of the stress and strain of service including physical complications of service like PT parade, route march in Fd/HAA/Eastern border postings, however, the claim for disability pension was rejected by the PCDA (P) considering the disability as neither attributable to nor aggravated by military service. Learned counsel contended that since the applicant was invalided out of service in low medical category, he should be granted disability pension for life.

5. Learned counsel further submitted that the case of the applicant is squarely covered by the judgment of the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India & Ors., [(2013) 7 SCC 316]**, as the disease of the applicant is mainly caused due to stress and strain of military service and thus it may be considered as attributable to/aggravated by military service.

6. *Per contra*, learned counsel for the respondents, through the counter affidavit filed, submitted that since the IMB, being an expert body, had considered the disability of the applicant 'Immature Personality' as 'neither attributable

to nor aggravated by military service' being constitutional in nature and not connected with service, and the applicant was invalided out of service due to the same, in terms of Para 173 of the Pension Regulations for the Army, 1961 Part-I, the applicant is not entitled to disability element of pension. Learned counsel further submitted that although the disability of the applicant was considered by the IMB as 'neither attributable to nor aggravated by military service', the claim of the applicant for the disability was forwarded to PCDA(P) and the PCDA(P) has rejected the same. Learned counsel for the respondents, therefore, prayed for dismissal of the OA.

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

8. In the present case, the applicant was enrolled on 28.09.1972 and while in service, he was diagnosed to be suffering from 'Immature Personality' and was invalided out of service on 16.08.1983 after rendering more than 10 years of service. The IMB held the disability as neither attributable to nor aggravated by service and opined in Part

III -2(d) 'Diseases are Constitutional in nature hence not connected with service'.

9. It would be pertinent to refer to Para 54 of the Guide to Medical Officers (Military Pensions) 2002 amendment 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."*

In the present case, there is no evidence that the applicant had served in combat areas including counter insurgency operations, HAA, service onboard ships etc. or any service conditions which could have made him suffer from psychiatric disorder.

10. Additionally, the law on the primacy of the opinion of a medical board has been well settled by the Hon'ble Supreme Court in the case of **Union of India & Another Vs. Ex Rfn**

Ravinder Kumar [Civil Appeal No. 1837/2009], wherein the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that opinion of medical board should not be over-ruled judicially unless there is a very strong medical evidence to do so. Relevant part of the above judgment reads as under :

“Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension brushing aside the opinion of Medical Authorities, record the specific finding to the effect that the disability was neither attributable to nor aggravated by military service, the court should not ignore a finding for the reason that Medical Board is specialized authority composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability due to military service and the conditions of service resulting in disablement of the individual.”

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.”

11. 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, the Hon'ble Supreme Court ruling amplifies that mental disorder, which cannot be medically detected during the enrolment process cannot be claimed to be attributable to rigours of service at a later stage, relevant part of the judgment reads as under :

".....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."

12. 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,

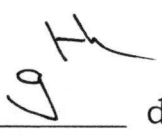
the conditions of service to which the soldier was exposed."

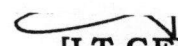
13. Furthermore, Para 5 of the Entitlement Rules makes it clear that the medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides, certain hereditary constitutional and congenital disease may manifest later in life, irrespective of service conditions. The mere fact that a disease is manifested during service does not *per se* establish attributability to or aggravation by military 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 and discharge him. 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 personality/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.

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

15. There is no order as to costs.

Pronounced in open Court on this 9th day of August, 2024.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


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

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