

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

OA 2135/2019 with MA 3011/2019

In the matter of :

Ex Hav Baldev Singh Rawat

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Virender Singh Kadian, Advocate

For Respondents : Shri Satya Ranjan Swain, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

M.A. No. 3011 of 2019 :

Keeping in view the averments made in this application and finding the same to be bona fide, in the light of the decision in the case of the ***Union of India & Ors. Vs. Tarsem Singh*** [(2008) 8 SCC 648], the instant application is allowed condoning the delay in filing the OA.

2. MA stands disposed of.

O.A. No. 2135 of 2019 :

3. Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007

(hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

- “(a) Quash and set aside impugned letter No. 13968425N/Pen/DP Corres dated 28.09.2019. And/or***
- (b) direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him gratuity and disability pension with the benefits of broad banding. and/or***
- (c) Direct respondents to pay the due arrears of disability pension with interest @ 12% p.a. from the date of discharge with all the consequential benefits.***
- (d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”***

4. The facts in brief are that the applicant was enrolled in the Indian Army on 07.06.1986 and was invalided out from service on 14.03.2002 after rendering 15 years, 07 months and 21 days of service (excluding 48 days of non-qualifying service) due to being in low medical category S₅H₁A₁P₁E₁-Psychological. The Invaliding Medical Board (IMB) held on 14.02.2002 assessed the disability of the applicant i.e. NEUROSIS ICD-300 (V 67)' @ 30% for life and held the same as 'neither attributable to nor aggravated by military service

(NANA)' and based on which, the applicant was denied disability pension.

5. The initial claim of the applicant for disability pension was rejected by the PCDA (P) vide letter dated No. G-3/85460/9-02 dated 31.10.2002 with an advice to submit an appeal against pension sanction authority within the time frame given by army medical corps record office vide letter no. C/13/968425/DP dated 10.01.2023. However the applicant did not submit any appeal. The applicant thereafter served Appeal-cum-Legal Notice dated 16.08.2019 seeking disability pension which was rejected by the respondents vide impugned letter No. 13968425N/Pen/DP Corres dated 28.09.2019 on the ground that the disability of the applicant was held to be NANA. Aggrieved by the same, the applicant has filed the present OA.

6. The 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 that time. The learned counsel for the applicant submitted that the respondents failed to consider the prolonged service

rendered by the applicant in different and difficult geographical and environmental conditions. The learned counsel relied upon the judgments of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India and others*** **[(2013) 7 SCC 316]** and in ***Union of India & Ors. Vs. Rajbir Singh, (2015) 12 SCC 264***, wherein it was held that the 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. The learned counsel further placed reliance on the judgment of Apex Court in ***Sukhvinder Singh Vs. Union of India and Ors. [2014 STPL (WEB) 468 SC]***, wherein 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. Hence, the learned counsel prayed that the applicant is entitled to the disability pension.

7. Per contra, the learned counsel for the respondents 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, the applicant is not entitled to the relief claimed for. The learned counsel further stated that the reasons for rejection of disability pension have already intimated while rejecting the representation of the applicant. He further pleaded that as per Para 173 of the Pension Regulations for the Army, 1961 (Part-I), the applicant is not entitled to disability pension and, therefore, the OA deserves to be dismissed.

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

9. In this case the applicant was invalided out from service on 14.03.2002 due to his disability 'Neurosis', which has been assessed @ 30% for life and opined by the IMB as neither attributable to nor aggravated by military service.

10. At the outset, 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.

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

"54. Mental (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 and the earlier dichotomy between "neurosis" and "psychosis" is no longer valid. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.

The concept of 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. Grant of compensatory benefits related to aggravation by service factors may be considered in the following circumstances :

(a) Psychiatric disorder arising within 6 months (extendable upto 12 months in some cases) 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).

(b) Psychiatric disorders arising within 6 months (extendable upto 12 months in exceptional cases) of:

- (i) CI ops tenure exceeding 2 years
- (ii) HA tenure exceeding 18 months
- (iii) Siachen tenure exceeding 6 months
- (iv) Deployment of extreme isolated posts for over 6 months
- (v) Incarceration as PW for more than 60 days
- (vi) Being held hostage under threat of death/torture for over 30 days
- (vii) Separation from the immediate family for 12 months or more at a stretch owing to exigencies of service, except when such separation is due to the individual being under arrest/involved in disciplinary proceedings.

(c) 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

3. Attributability may be granted under special/extraordinary circumstances associated with any of the factors enumerated in para 2 above, but the medical board must set out in writing the reasons for the same. This provision should be used sparingly/with transparent objectivity and the medical board should not allow its decision to be swayed by sympathy or other extraneous considerations."

12. In the Summary and Opinion by the Additional Adviser (Psychiatry) of MH, Meerut dated 11.02.2002 in the IMB, it was recorded that :

"This 36 yrs old NCO with about 16 yrs of service is an old case Neurosis (ICD 300V67- obsessive compulsive disorder) serving in low med cat 33 psychological Temp 6/12 yrs+6/12yrs wef 30 Dec 2000. Last med board was held on 12 Jul 2001. He was admitted for review of his med cat. His unit report dated 16 Jan 2002 recommends for invalidment, as he has become a liability to service since he takes no interest in the official duties assigned to him. He has been noted to remain aloof, disinterested and indulging in undue religiosity vide para 8 of AFMSF 10 dated 16 Jan 2002.

Background history reveals that the illness had been gradual and insidious in onset manifesting in undue religiosity, thinking of only religious scriptures, reading of religious teachings of Santsri Asaramji of Ahemedabad, remaining absent from duties Le. OSL twice of 30 days in Jan 99 and 15 days in April 2000. He was admitted and evaluated in Apr/May 2000 and discharged as Psy NAD. He remained asymptomatic for about 4 months. Thereafter he became OSL and spent his time meditating at Alendi (Maharastra) from where he was brought and admitted at CH (SC) Pune. Mental status examination at that time had revealed intrusive and depressive thoughts recurring throughout the day Though he knew that the thoughts were irrational he was unable to block them and hence became amxious. Entertained overvalued ideas regarding his spiritual quest and religious teachings/ tenets Insight was preserved. He

was treated as a case of Neurosis (OCD) with Tab Setraline 200mg/day and Tab Haloperidol 5mg ½ at HS. He was sent on 6 weeks sick leave and on expiry of the same he was retained in service with maintenance therapy."

There are various factors given in order to assess the attributability and aggravation of the disability as per para 54 of GMO 2002. In this case, there is no material to show that the applicant suffered the disease because of any factors related to the service conditions or any factors mentioned in Para 54 of the GMO, 2002. In the instant case, we have found that the IMB has given adequate reasons to justify its opinion of declaring the disability as neither attributable to nor aggravated by military service and we are satisfied with the same. 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 him 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.

13. 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."

14. 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.”

15. 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.”

16. From the above, it is clear that the disability of the applicant does not fall within the scope of attributability to military service and hence the IMB has rightly considered the disability as neither attributable to nor aggravated by service. We, therefore, do not find any infirmity in its proceedings.

17. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is not entitled

for grant of disability element of pension. The OA stands dismissed being devoid of merits.

18. There is no order as to costs.

Pronounced in open Court on this 4 day of July, 2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

/nmk/