

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

OA 357/2017

Ex Cdt Shivam Bhatnagar ... Applicant
Versus
Union of India and Ors. ... Respondents
For Applicant : Mr. Mohan Kumar, Advocate
For Respondents : Mr. Arvind Patel, Advocate

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 of The Armed Forces Tribunal Act, 2007, the applicant has filed this OA with following prayers:-

- (a) *To direct the respondents to fix the disability pension @50% for life and grant the benefit of rounding of @ 75% for life with effect from 31.03.2013 (date on which petitioner was discharge) and award consequential benefits accordingly with 18% interest.*
- (b) *To give such other reliefs a may be deemed fit and proper for the ends of justice in law, equity and natural justice as deemed appropriate in the facts and circumstances of the case.*

2. The applicant joined Indian Naval Academy as a Cadet in Course Ser No 87 on 03.01.2011. The applicant was Invalided Out by Invaliding Medical Board held on 30.03.2013 for disability of Generalised Seizure @30% and

Fracture Clavicle (Rt) @20% for one year while holding Generalised Seizures as neither attributable to nor aggravated by Naval Service and the second disability of fracture as attributable to service.

3. As per letter dated 08.07.2014 addressed by Directorate of Naval Training, IHQ of MoD to the father of the applicant it was specified that the fracture sustained by the applicant was due to a fall from bed during seizure episode whilst he was admitted at INHS Ashvini and that has been recommended for 20% disability pension for one year as the disability is likely to heal in short duration of time.

4. Granting *ex-gratia* disability award for one year the aforesaid letter specified that the applicant shall be due for a medical review after one year to assess the percentage of disability for grant of *ex-gratia* disability award. Subsequently vide letter No.PN/7147/DP/14 dated 24.07.2014 the applicant was granted *ex-gratia* disability award @20% for one year.

5. Further, the applicant underwent Reassessment Medical Board dated 16.06.2015 wherein the aforesaid RAMB assessed the disability of fracture @ NIL % for life and the same was forwarded vide IHQ MoD (Navy)/DMS(H) letter no. MH/1474 dated 06.08.2015 followed by another letter PN/7147/DP/14 dated 26.08.2015 addressed to PCDA(N), Pension Cell sanctioning

ex-gratia disability award @ 20% for the intervening period from 31.03.2014 to 15.06.2015 and thereafter @ NIL% for life as per RAMB dated 16.06.2015.

6. Relying upon order dated 16.04.2014 by the Hon'ble High Court of Delhi in Ex-LC Shreya Manhas Vs. Union of India and Ors., [W.P. (C) 7898 of 2018] the learned counsel for the applicant submits that the applicant is entitled for *ex-gratia* disability award even after 16.06.2015 for the disability of fracture as the disability was held as attributable to service.

7. Placing reliance on the judgement of the Hon'ble Supreme Court in Dharamvir Singh Vs. UOI & Ors [2013 (7) SCC 36], Learned Counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he suffered the disability while in service, and thereby, disability of Generalised Seizure detected during the service is deemed to be attributable to or aggravated by Naval service.

8. Per contra, learned counsel for respondents further submits that the first disability of Generalised Seizure of the applicant were assessed as "neither attributable to nor aggravated" by Naval service and that the second disability of fracture of the applicant was

assessed by the RAMB @NIL%; thus, the applicant is not entitled for grant of *ex-gratia* disability award due to policy constraints.

9. We have heard both the parties and have perused the documents placed on record including the medical documents of the applicants. The only question before us to adjudicate is whether the applicant would be entitled for grant of *ex-gratia* disability award for both the disabilities as has been assessed by the RMB and the RAMB?

10. As far as disability (i) is concerned, we find that the Guidelines for assessment of Psychiatric Disorder have been spelt out in the Guide to Medical Officers (Military Pension), 2002 which elaborates in detail the factors which impinge on Attributability and Aggravation of Psychiatric Disorders in Para 54 which are reproduced below:

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 counter insurgency 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, 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 or gross neuro cognitive 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 or 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.

11. 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, with respect to disability (i).

12. Before coming to a considered opinion, it would be pertinent to refer to the judgement of the Hon'ble Apex Court in Ex Cfn Narsingh Yadav Vs. UOI & Others [CA No 7672 of 2019 Date of Decision: 03/10/2019] 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”.

13. As far as the judgement of Hon'ble High Court of Delhi in Ex-LC Shreya Manhas Vs. Union of India and Ors., [W.P. (C) 7898 of 2018] as relied upon by the applicant, is concerned, we find that none of the petitioners in that case were detected with mental disorders, and therefore, the same does not help the case of the applicant. 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”.

14. Moving to second disability, we find that while the disability of Fracture Clavicle was held as attributable to service and assessed @20% of life by the RMB, the same was assessed @NIL % by the RAMB dated 16.06.2015, which clearly shows that fracture suffered by the applicant has healed at the time of RAMB dated 16.06.2015.

15. It is well clear that injuries like fracture are of temporary nature, like the disability in the instant case, which as per numerous studies, is known to heal with time and specifically, post surgery of the injury, and thus, the %age of the disability is mandated to be reduced unless aggravated. There are ample medical studies which make it clear that the cases of fractures can be healed well within the limited time period and not continue for lifetime.

16. In the present case, we find that there is no infirmity in the report of the RAMB which may warrant the grant of an ex-gratia disability award for life. 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.

17. With respect to judgement of Hon'ble High Court of Delhi in Ex-IC Shreya Manhas Vs. Union of India and Ors., (supra), we find that none of the petitioners in the aforesaid case were subjected to RAMB, nor the issue of adjudication with respect to assessment was

before the Hon'ble High Court and thus, the instant case being distinguished on factual matrix has to be adjudicated as per its own facts, in line with the observations of the Hon'ble supreme Court in Para 18 of *Cfn Narsingh Yadav* (supra)

18. For the foregoing reasons, this OA is devoid of merit and liable to be dismissed.

19 Therefore, OA 357/2017 is dismissed.

20. No order as to costs.

21. Pending miscellaneous applications, if any, are disposed of.

Pronounced in the open Court on 28th day of May 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Akc