

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

A..

OA 685/2018

Ex LME A Ramesh

Versus

Union of India & Ors.

..... Applicant

..... Respondents

For Applicant : Mr. I. S. Singh, Advocate with

Mr. Abhishek Singh, Advocate

For Respondents : Mr. Rajesh Kumar Das, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT. GEN. C. P. MOHANTY, MEMBER (A)

ORDER
10.05.2024

Vide our detailed order of even date, we have dismissed the main OA No.685/2018. Faced with this situation, learned counsel for the applicant makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the applicant and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order, therefore prayer for grant of leave to appeal stands dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/jyoti/

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

O.A. No. 685 of 2018

In the matter of :

Ex LME A Ramesh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri I.S. Singh, Advocate

For Respondents : Shri Rajesh Kumar Das, Sr. CGSC

CORAM:

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

ORDER

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is aggrieved by rejection of the appeal dated 22.05.2017 vide the impugned order dated 16.08.2017 (Annexure A-1) on the ground of delay in terms of the policy letter dated 17.05.2016.

2. Brief facts of the case are that the applicant was enrolled in the Indian Navy on 23.06.1979. In October, 1987, while posted at INS Vinduruthy, the applicant was diagnosed with 'Schizophrenia' and remained under treatment at the Military Hospital, Bangalore. Due to being

in low medical category, he was invalided out from service on 21.01.1988 after 08 years, 06 months and 29 days' service. The Invaliding Medical Board (IMB) assessed the applicant's disability i.e. SCHIZOPHRENIA @ 20% for two years, and held the same as 'neither attributable to nor aggravated by military service (NANA)', based on which, disability pension has been denied to the applicant. Hence, the present OA. The appeal filed by the applicant on 22.06.2017 was rejected on the ground of delay of 29 years vide letter dated 16.08.2017.

3. 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 the time of enrolment. He further submitted that during service, the applicant was detected with the disease Schizophrenia and remained under treatment in the military hospital. Consequently, due to the disability, he was recommended to be invalided out from service in low medical category. Relying upon various judgments of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India and**

others [(2013) 7 SCC 316], Union of India & Ors. Vs.

Rajbir Singh, (2015)12 SCC 264 etc., wherein it was held that an 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 and thus the disability was caused due to stress and strain of service. Hence, he pleaded that the applicant is entitled to the disability pension.

5. Learned counsel for the respondents, on the other hand, 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' being a constitutional disorder, the claim of the applicant for disability pension was rejected in terms of Para 101 of the Navy Pension Regulations, 1964. Learned counsel submitted that the applicant filed an appeal after about 34 years and has no case for grant of 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 invalidated out from service on 21.01.1988 due to his disability 'Schizophrenia', which has been assessed @ 20% for two years and opined by the IMB as neither attributable to nor aggravated by military service being constitutional disorder thus not related to service.

10. 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 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."*

12. From the aforesaid, it is clear that the disability in question is a psychiatric disease caused by a complex interplay of genetic vulnerabilities and exogenous stress factors. Attributability and aggravation are conceded on the basis of factors mentioned in the aforesaid Para. The original medical board proceedings produced at the time of hearing in Part III - Opinion of the Medical Board, indicate at Clause 2(d) the disability of the applicant to be 'Constitutional disorder triggered of by domestic problems'. Perusal of the same also shows that the onset of the disease is July, 1986

and he remained under treatment from time to time till his invalidment from service. There is no material to show that the applicant suffered the disability because of any factors mentioned in the aforesaid provisions related to service.

13. With regard to the attributability or aggravation of a mental disorder due to service, 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.”

14. 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."

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 of only 8 years as the opinion of the medical board shows that the disease was being constitutional disorder triggered of by domestic problems and hence the IMB has rightly considered the disability as neither attributable to nor aggravated by service and not connected with service. We, therefore, find the opinion given by the medical board is justified and thus 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. Pending MAs, if any, stand closed accordingly. There is no order as to costs.

Pronounced in open Court on this 10th day of May,

2024.

[REDACTED]
[REDACTED]
[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/ng/