

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

OA 791/2016

Ex Rect Ravi Prakash ... Applicant
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. Amit Kumar, Advocate
For Respondents : Mr. Satya Ranjan Swain, 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, the applicant has filed this application seeking grant of disability pension.

2. The applicant was enrolled in the Indian Army on 30.10.2001 and invalided out from service on 06.07.2002. The applicant submits that for the purpose of invalidation, he is entitled to disability pension. Per Contra, it is submitted by the respondents that the disability of the applicant was existing at the enrolment stage, and that his disability was held to be NANA with assessment of 15-19% for lifelong.

3. Learned counsel for the 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 the competent authorities denied him pensionary benefit despite the fact that while in service, applicant was undergoing training where conditions are tough and sometimes it affects the trainee on his medical conditions.

4. Learned counsel further submitted that the applicant was shown the door due to the reason that he has been detected with disease, however denied pension ignoring the fact that he did not have such disease while getting enrolled into the service.

5. Per Contra, learned counsel for the respondents submits that under the provisions of Regulation 173 of the Pension Regulations for the Indian Army, 1961 (Part-I), the primary condition for the grant of disability pension is attributable to or aggravated by Army service and is assessed @20% or more. Relying on the aforesaid provision, Learned counsel for the respondents further submits that the aforesaid disability of the applicant was assessed as neither attributable nor aggravated by military service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension.

6. On the careful perusal of the materials available on record and also the submissions made on behalf of the

parties, we find that the extent of the disability was assessed to be 15-19% which is less than the bare minimum for grant of disability pension in terms of Regulation 173 of the Pension Regulations for the Indian Army, 1961 (Part-I). However, in line with the ratio laid down in Para 9 of the Sukhwinder Singh Vs UOI [2014 (14) SCC 364], if a personnel has been invalidated out from service with an assessment of less than 20%, the disability shall be presumed to be 20% for the purpose of assessment. Thus, we are of the opinion that the aforesaid disability of the applicant warrants an assessment of 20%.

7. Proceeding to adjudicate on attributability, we find it pertinent to refer to the 'Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008, which take effect from 01.01.2008 vide Paras 6, 7, 10, 11 thereof provide as under:-

“6. Causal connection:

For award of disability pension/special family pension, a causal connection between disability or death and military service has to be established by appropriate authorities.

7. Onus of proof.

Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/ invalidment/release by which time the service documents of the claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would lie on the claimant.

10. Attributability:

(a) Injuries:

In respect of accidents or injuries, the following rules shall be observed:

(i) Injuries sustained when the individual is 'on duty', as defined, shall be treated as attributable to military service, (provided a nexus between injury and military service is established).

(ii) In cases of self-inflicted injuries while 'on duty', attributability shall not be conceded unless it is established that service factors were responsible for such action.

(b) Disease:

(i) For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:-

(a) that the disease has arisen during the period of military service, and

(b) that the disease has been caused by the conditions of employment in military service.

(ii) Disease due to infection arising in service other than that transmitted through sexual contact shall merit an entitlement of attributability and where the disease may have been contacted prior to enrolment or during leave, the incubation period of the disease will be taken into consideration on the basis of clinical course as determined by the competent medical authority.

(iii) If nothing at all is known about the cause of disease and the presumption of the entitlement in favour of the claimant is not rebutted, attributability should be conceded on the basis of the clinical picture and current scientific medical application.

(iv) When the diagnosis and/or treatment of a disease was faulty, unsatisfactory or delayed due to exigencies of service, disability caused due to any adverse effects arising as a complication shall be conceded as attributable.

11. Aggravation:

A disability shall be conceded aggravated by service if its onset is hastened or the subsequent course is worsened by specific conditions of military service, such as posted in places of extreme climatic conditions, environmental factors related to service conditions e.g. Fields, Operations, High. Altitudes etc."

(emphasis supplied)

8. A cursory look at the aforesaid para would make it clear that for causal connection to be established between the disability and the military service, it has to be proved that the



conditions of employment in military service have led to the causation of disability. To ascertain the same, we find it pertinent to refer to the opinion of the Invalid Medical Board, titled as *“Summary and Opinion of Lt Col Ajay Kumar Class Spl (Derm & Ven) of BH Lucknow dated 10.02.2002”*, and reproduced as under:

“This 20 years old recruit has presented with complaints of a scaly eruption over the body since Dec 2001 while undergoing training. He denies any past history of similar eruption. There is no personal or family history of psoriasis.

Dermatological examination reveals circumscribed scaly erythematous plaque type lesions over the anterior aspect of both legs. He also has multiple smaller erythematous scaly lesions scattered over the trunk and extremities, more over this extension aspects circumscribed scaly lesions are present on the scalp.

No flexural, volaris or mucosal lesions. Toe nails, skin pits, discoloration and thickening of nail plate. No focal involvement.

General physical and systemic exam within normal limits.

Routine haematological and urine exam within normal limits. Skin biopsy B/16/02 of BH Lucknow dated 6/2/02 is consistent with Psoriasis.

A case of PSORIASIS VULGARIS confirmed clinically and histopathologically. In view of the disease with frequent exacerbations which would result in considerable mobility he is recommended to be invalided out of service in medical classification P5.”

9. On an examination of the aforesaid opinion of the Classified Specialist of the Medical Board, we find that the disability may have been present in a quiescent stage, and



therefore, could not have been detected by the Recruiting Medical Officer, and the same could have been a genuine error of observation, being a borderline case, wherein due to paucity of time, and limited facilities, it is not feasible to conduct a thorough medical examination, and thus, had this been not the case, the disability could have been detected at the initial stage itself.

10. It is pertinent to note that the applicant was enrolled on 30.10.2001 and the medical issue arose in Dec 2001 itself with the disability detected in Jan 2002 during the 2nd Medical Exams and the applicant was found to have been suffering from the disability within a month of his enrollment. Not to lose sight of the observations of Medical Board vide Part - III which reads to the effect:

Part-III

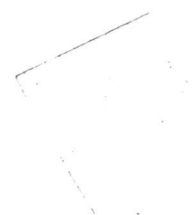
OPINION OF THE MEDICAL BOARD

(Not to be communicated to the Individual)

Note- Clear and decisive answers should be filled in by the Board. Expressions such as 'might', 'may', 'probably' should be avoided.

Did the disability/ies exist before entering service ? YES

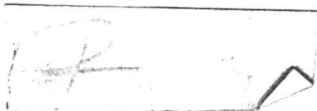
11. It is relevant to observe that in the instant case, the disability of the applicant existed before entering into the service and that the primary/initial medical examination carried out at the time of enrollment is of a routine nature,



and is not exhaustive in nature so as to enable every medical detection with respect to an individual, and therefore, a single person being Recruiting Medical Officer cannot be said to have an expert in every dimension of medical field, and that the said disability might remain dormant usually but manifest during training period.

12. Thus, in absence of any evidence to the effect that the disability has been attributed or worsened due to military service, we cannot subscribe to the arguments of the applicant that any disability presumed to have arisen in service has to be held attributable, especially when the disability has arisen within a month of enrollment, with a less than one month of training not establishing any causal connection of the causation of the disability to the military service.

13. As far as the alternate prayer for grant of invalid pension is concerned, we are of the opinion that indeed there is not an iota of doubt that the provision for invalid pension under the Pension Regulations is a beneficial provision for the service personnel of the armed forces, yet the same cannot be used as a tool to claim the benefits which do not accrue to the claimant without them rendering service enough to have



causal connection to the disabilities arising out of service, for which he was held to be unfit for further service.

14. It is important to observe that the primary medical examination conducted at the time of enrollment of PBORs is not a rigorous medical examination procedure as followed during the Cat/Re-Cat Medical Boards or for that matter RMB/IMB, and that any disability which can escape the initial medical examination cannot be used as a tool to claim invalid pension even without rendering service of even one month to showcase any relation of invalidation or any link whatsoever to the military service. It is pertinent to record that just for the sole purpose a disability escaped the detection of the Initial Medical Examination, which could have been a genuine error on the part of the Recruiting Medical Officer, does not ipso facto make an individual entitled for Invalid Pension.

15. As far as the reliance placed by the applicant on Brig Antaryani Pradhan Vs UoI & Ors. [OA 523/2022; Date of decision-01.05.2023] is concerned, we find that the officer in the aforesaid case has served for more than 31 years, whereas in the instant case the disability was detected within a month of enrollment into the service. Similarly, the facts of Ex Rect. Chena Ram Vs UoI & Ors [OA 48/2011; Date of

decision:- 17.04.2013] are different from the facts of instant case, since the disability of the individual Ex Rect Chena Ram was opined to be aggravated by the Medical Board, whereas the same has been held to be NANA in the instant case. Thus, the reliance placed by the applicant on the aforesaid cases is misconstrued.

16. We find resonance in the observations made by Hon'ble Supreme Court in Secretary, Ministry of Defence and others Vs A.V.Damodaran (dead) through LRs and others [(2009) 9 SCC 140], which clearly brings out the following principles with regard to primacy of medical opinion have been laid down:-

8. "When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medial category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invalidating medical board. The said release/invalidating medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same, they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be

considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/recommendations on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and, of course, the physical examination of the individual.

9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the manner for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service.”

17. With the issue of primacy of medical opinion no longer res integra as held by Hon'ble Supreme Court in Ex CFN Narsingh Yadav Vs. UoI (Civil Appeal No. 7672 of 2019), we must reiterate that we are not medical specialists to scrutinize the opinion of medical boards, and it would not only be beyond our jurisdiction but also hazardous if this Court were to examine the accuracy of such expert opinion, based on competing medical opinions. The scope of judicial review does not entail the Court embarking upon such misadventures. As far as judicial review of decisions based on medical expert opinion is concerned, there is no doubt that wide latitude is provided to the executive in such matters and the Court does not have the expertise to appreciate and decide

on merits of medical issues on the basis of divergent medical opinion.

18. In view of the aforesaid analysis, we are of the opinion that the aforesaid case lacks merit and hence, is liable to be dismissed.

19. Consequently, the present OA 791/2016 is dismissed.

20. No order as to costs.

21. Pending miscellaneous application, if any, stands disposed of.

Pronounced in the open Court on 20th November, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Ps

A