

A

COURT No.3  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA 607/2016

WITH

MA 90/2024

Maj Amarjeet Singh Virk (Retd) ..... Applicant  
VERSUS  
Union of India & Ors ..... Respondents

For Applicant : Mr. V.S. Kadian, Advocate  
For Respondents : Dr. V.S. Mahndiya, Advocate

Dated: 14<sup>th</sup> October, 2025

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)

HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 90/2024

This is an application filed on behalf of the respondents seeking condonation of delay in filing the additional documents. For the averments made in the application, the delay in filing the additional documents is condoned and the documents are taken on record. MA stands disposed of.

OA 607/2016

2. Aggrieved by the respondents' action of invalidating the applicant from service on the ground of **Borderline Personality Disorder**, the applicant has filed the present Original

Application under Section 14 of the Armed Forces Tribunal Act, 2007, seeking the following reliefs:

- (a) Call for the records based on which the applicant has been invalidated out of service as a psychiatric case without following the due process of law and thereafter quash the same including the order dated 01.11.1995 and the order dated 31.12.2015 with further direction to the respondents to notionally reinstate the applicant in service for enhanced service element of pension which was denied to him due to illegal invalidment.

Or in the alternative,

- (b) Call for the records based on which the disease of the applicant was categorized as physical casualty which was required to be categorized as battle casualty based on its onset in OP Pawan in Sri Lanka and was granted only the disability pension @ 30% from 1995 to 2000 which was further reduced to 20% with effect from August 2000 for life instead of grant of War Injury element at a minimum rate of 60% or more with effect from 01.01.1996 for having been declared unfit for other services/civil employment to be rounded off to 75% with further direction to grant him arrears of difference between the two with interest @ 18%.
- (c) Direct the respondents to grant the applicants all the benefits which are admissible to him including the measures of rehabilitation such as allotment of petrol pump, CNG Stations by treating him a battle casualty.
- (d) Pass such order/orders as deemed appropriate in the facts and circumstances of the case.

3. The brief facts of the case are that the applicant was commissioned in the Indian Army on 9<sup>th</sup> June, 1984 (PC). As stated by the applicant during the period from 1987 to 1990, he participated in various military operations including Op TRIDENT, Op Pawan and Op MEGHDOOT. However, while

being posted as Instructor Class C at the National Defence Academy, he planned to take a part of Annual Leave from 20/10/1993 to 25/11/1993; while he was under impression that the same had been granted to him however, on return, he was severely reprimanded and declared AWL (absent without leave). Later on as stated by the applicant, on another occasion he had no option but to leave his unit to attend his mother on 11/10/1994. Further, during an Inter- Company Hockey Tournament on 08/03/1995, the applicant had an argument with Second-in -command. On 23/3/1995, AFMSF 10 was raised against the applicant which resulted his discharge subsequently.

4. The opinion of Senior Psychiatry Advisor dated 15/06/1995 stated that the applicant is suffering from BODERLINE PERSONALITY DISORDER and recommended his invalidment. Based on this opinion, the applicant was invalidated out of service on 9<sup>th</sup> November, 1995.

5. At the time of invalidment, the applicant being in low medical category was examined by a duly constituted Invaliding Medical Board (IMB). As per the IMB proceedings dated 16<sup>th</sup> October, 1995, the applicant's disability was assessed as "Borderline Personality Disorder" under IMB 301 (E), with

the degree of disablement determined at 30% for a period of two years. The IMB had concluded that the applicant's disability was neither attributable to nor aggravated by military service and thus the applicant is not entitled to disability pension. The applicant filed an appeal against the rejection of his disability pension and the claim was subsequently accepted at 30% for five years from the date of invalidment, i.e., 9<sup>th</sup> November, 1995 to 13<sup>th</sup> August, 2000, as communicated vide letter dated 11<sup>th</sup> November, 1998. Thereafter, as stated by the applicant, his Disability pension was reduced to 20% post August 2000, but was made for life.

6. Mr. V.S. Kadian, learned counsel for the applicant, at the outset, contended that the respondents' action in invaliding the applicant from service on medical grounds and thereafter, denying him war injury pension and granting him only Disability Pension and declaring him unfit for civil employment despite the onset of the disease during Operation Pawan in Sri Lanka is illegal and arbitrary.

7. Learned counsel further submitted that the applicant was found medically fit at the time of his commissioning in the Army. However, he was invalided out of service on the ground of psychiatric illness, the origin of which was while deployed in

Op Pawan. The respondents were thus duty-bound to categorize his disability as a battle casualty and grant him war injury pension but they initially denied him even disability pension, which was granted only in 1998 at the rate of 30%.

8. He also drew attention to the medical opinion of the Graded Specialist (Medicine) at MH Jaipur dated 22<sup>nd</sup> March, 1995, wherein it was specifically recorded that the applicant was well-oriented, well-behaved and answered all questions in a relevant manner with no evidence of psychiatric illness. However, within less than 24 hours, this opinion was wholly reversed, when the Senior Adviser (Psychiatry) diagnosed the applicant as a case of **Borderline Personality Disorder** without conducting any objective assessment. This, it was submitted, clearly demonstrates mala fides on the part of the respondents.

9. It was further contended that when the applicant's medical category was downgraded to S3 (T24) on 21<sup>st</sup> April, 1995, the respondents were obliged to station him at a place with adequate psychiatric facilities, in line with the recommendations of the Medical Board. Instead, he was denied a fair opportunity to recover and recuperate following his hospitalisation in April 1995 and was simultaneously subjected to disciplinary proceedings that had been pending since

October 1994, despite there being no urgency. Such action, it was submitted, was violative of principles of fairness and justice. Lastly, learned counsel emphasized that since the applicant was posted in a field area and war zone in 1988, he was entitled to be treated as a battle casualty and accordingly granted war injury pension, assessed at not less than 60%, particularly in view of his being declared unfit for service even in civil employment.

10. The respondents, in their counter-affidavit, denied the contentions of the applicant and submitted that the eligibility conditions for grant of disability pension are governed by Regulation 48 of the Pension Regulations for the Army, 1961 (Part I). The said provision stipulates that unless otherwise specifically provided, a disability pension, comprising the service element and the disability element, may be granted to an officer who is invalided out of service on account of a disability that is either attributable to or aggravated by military service and is assessed at 20% or more. It was further submitted that an officer in a low medical category at the time of retirement/invalidment is required to appear before a Release Medical Board (RMB) or an Invaliding Medical Board (IMB) if his medical condition does not permit retention in service up to

the age of superannuation. As provided under Rules 17(a) and 27(c) of the Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982 (ER 82), the assessment made by the RMB is only recommendatory in nature and remains subject to review by the competent medical authorities. The respondents also raised the plea of delay and laches contending that the present OA is highly belated as the applicant's second appeal was rejected on 6<sup>th</sup> September, 2000, whereas the OA was filed only in May 2016. On merits, it was submitted that since the applicant was invalided out of service, he is entitled only to rounding off of his disability element from 20% to 50% as per the policy then in force. However, he is not entitled to war injury pension as his disability was not assessed as attributable to operational service at the time of invalidment. On these grounds, the respondents seek dismissal of the OA with costs.

11. We have carefully considered the pleadings on record, the submissions made by learned counsel for the parties as well as the documents and materials produced.

12. At the outset, we notice that this Tribunal, vide its order dated 22<sup>nd</sup> August, 2023, made the following observations:

*“Submissions have been partly addressed on behalf of either side. During the course of submissions made on behalf of the applicant, it has been submitted that Prayer 8(a) seeking notional reinstatement as well as Prayer 8(c) seeking grant of all the benefits which are admissible to the applicant, including the measures of rehabilitation such as allotment of petrol pump, CNG stations by treating him as a battle casualty, are not pressed. It is further submitted on behalf of the applicant that all that the applicant through the present OA now seeks is the grant of war injury pension.”*

13. In view of the limited scope of relief pressed, the only issue that arises for determination is whether the applicant is entitled to war injury pension.

14. Upon appraisal of the case, we are of the considered view that the applicant has failed to make out any case for interference by this Tribunal and we record our findings which are as follows.

15. The applicant was invalided out of service on account of “Borderline Personality Disorder”. The IMB, after due evaluation, categorically opined that the disability was neither attributable to nor aggravated by military service. Unless such a finding of attributability/aggravation is recorded in favour of the applicant, Regulation 48 of the Pension Regulations for the Army, 1961 (Part I) does not permit grant of disability pension or war injury pension. The plea of the applicant that the disease originated during Op Pawan is unsupported by any medical or service records. Instead the IMB clearly indicates the date of

onset of disability as 22/03/1995 which arose while he was posted in Jaipur. Hence, his claim to war injury pension is unsustainable in the eyes of law.

16. It is a settled proposition that the findings of a duly constituted Medical Board enjoy primacy in matters concerning medical fitness and assessment of disability. Judicial interference is warranted only where such findings are shown to be perverse, mala fide or unsupported by evidence. In the present case, the applicant has not produced any trustworthy material to dislodge the conclusions of the IMB or subsequent reviewing medical authorities. His attempt to challenge the medical opinion rests only on conjectures and allegations, which cannot form the basis for judicial review. The applicant placed the reliance on AFT Lucknow bench judgement in *Ex Sepoy Shamsher Shahi Vs. Union of India in OA-343/2019* dated 8/7/2021 wherein, the same remedy was prayed by the Applicant. It is pertinent to mention that the facts and circumstances of both the cases do not stand on the same pedestal. In *Sepoy Shamsher Shahi Vs. Union of India (supra)*, the onset of the disability in the case being quoted was during the tenure of Op Meghdoot whereas in the present case, as per the IMB proceedings, the onset of the disability was on

22/3/95 at Jaipur i.e. much later than the last military operation where the applicant was posted i.e. Op Meghdoot. Hence the relief so in the former case granted cannot be considered in this case.

17. It is on record that the applicant's claim for disability pension was considered despite the fact that his delinquent conduct/indiscipline on many occasions were reported which adversely impact the overall military discipline and the claim was accepted in 1998 with the degree of disablement assessed at 30% for a period of five years. Later he was granted 20% for life for which the benefit of rounding off to 50% as per the policy has been presumed by this Hon'ble Tribunal based on the submissions from both the sides and the fact that this does not form a part of his prayer. These benefits are in accordance with law and the applicable regulations. Having received all admissible entitlements, the applicant cannot seek to elevate his case to that of a battle casualty for war injury pension, which is reserved for cases where the disability is directly linked to operations or attributable/aggravated by military service.

18. We also find that the present OA seeks to reopen issues that attained finality long back, after the rejection of the second appeal in 2000.

19. In the light of the above, the OA appears to be frivolous, and wholly devoid of merit. It is accordingly dismissed.

20. There shall be no order as to costs.

Pronounced in open Court on this 14<sup>th</sup> day of October, 2025.

(JUSTICE NANDITA DUBEY)  
MEMBER (J)

(RASIKA CHAUBE)  
MEMBER (A)

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