

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

D.

OA 2089/2019 WITH MA 2992/2019

Ex Rect Sunder Singh
VERSUS
Union of India and Ors.

... Applicant

.. Respondents

For Applicant : Mr. S M Dalal, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM

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

ORDER
22.07.2025

Judgment in this matter has been pronounced today vide a separate signed order. At the time of hearing, certain original documents were kept by us for perusal. Since the judgment in the matter has now been pronounced, these documents be returned to the respondents after taking due acknowledgement.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

/RB/

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ORDER

MA 2992/2019

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in **Union of India and others** Vs. **Tarsem Singh** [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA. The MA stands disposed of.

OA 2089/2019

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

applicant has filed this OA seeking grant of disability pension.

3. The applicant vide the present OA 2089/2019 has made the prayer for grant of disability pension @ 50% by giving benefits of broadbanding. However, during the course of the submissions made on 07.08.2023, the applicant has confined his prayer to invalid pension only. Thus, the present case is being considered qua the prayer for grant of invalid pension alone. The undisputed facts reveal that the applicant was enrolled in the Indian Army on 26.12.1994 and invalided out from service in low medical category (LMC) EEE w.e.f 09.05.1995 due to disability VITILIGO-709 under Rule 13(3)(iv) of the Army Rules, 1954. After almost 23 years of his invalidation from service, the applicant filed an appeal on 20.03.2018 u/s 6 of the RTI Act, 2005 to know the status of his First Appeal filed on 22.05.2017. AG's Branch/PS-4 vide Note No. B/40431/RTI/2018/AG/PS-4 dt. 13.04.2018 intimated to the RTI Cell, ADG AE, HQ of MoD (Army) that they have not received any case of disability pension in respect of

the applicant and the same was then communicated to the applicant's vide letter dt. 21.05.2018, the applicant then resubmitted the First Appeal dt 22.05.2017 to the Appellate Committee on First Appeal (ACFA) praying for grant of disability pension @ 50% by giving benefit of rounding off. The applicant was intimated vide letter No. 4187885/DP dt. 17.10.2018, about his non-entitlement to disability pension.

4. 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, his subsequent discharge from service on medical ground is due to tough and harsh training conditions but ignoring this fact the competent authorities denied him pensionary benefits.

5. The learned counsel for the applicant further submitted that the applicant is entitled to invalid pension, if not disability pension, as per Regulation 197(b) of the Pension Regulations for the Army, 1961 (Part-I) and also

in view of the Govt. of India, Ministry of Defence policy letter dated 16.07.2020, which provides that the armed forces personnel are entitled for invalid pension who are invalidated out of service with less than 10 years of qualifying service on account of any bodily or mental infirmity, which is neither attributable to nor aggravated by military service.

6. *Per contra*, the learned counsel for the respondents submitted that the disability of the applicant was preexisting at the enrollment stage, it was not connected with military service and was assessed @ 11 to 14% (for two years) as neither attributable to nor aggravated by the service, hence, the applicant is neither entitled to Disability Pension nor Invalid Pension.

7. As regards the alternate prayer for grant of Invalid Pension, it is pertinent to refer to the opinion by **Lt. Col K. Das classified SPL (Der & Std) of BH Lucknow dated 27.01.1995** reproduced as under:

***“A case of Vitiligo denies history of ‘Vitiligo’
gives recent history of appearance of***

depigmented lesions over scalp on the hair margin just behind the ears on a symmetrical fashion apart from the depigmented lesion on RT areola.

In view of the recent origin bilaterally symmetrical distribution and unpredictable nature of the disease it considered to make the individual unfit for further training."

8. According to ***'Indian Association of Dermatologists, Venereologists and Leprologists':***

"Vitiligo is an auto immune disease wherein the body's immune system mistakenly attacks and destroys its own healthy cells and tissues. In the case of Vitiligo, the immune system targets and destroys the melanocytes resulting in development of pale white patches on the skin."

9. Further as per the opinion of the Invalid Medical Board, titled as ***"Summary and Opinion by Col P.S. Snehi, Senior Advisor in Dermatology and Std"*** dt. 22.02.1995 reproduced as under:

"A recruit aged 18 years was detected having vitiligo patches with Temple & Right nipple within 12 days of recruiting. Denies history of Vitiligo among other family members (parents). Examination reveals irregular, bilateral, symmetrical depigmented patches temple region of scalp with whitening of hair on patches.

Similarly varying sized patches near frontal hair line. Two vitiliginous patches right medial ankle, depigmentation of right nipple areola present. Vitiliginous involvement of lips & mucosa; glans and prepuce present. Clinically a case of Vitiligo vulgaris with involvement of resist sites. In view of widely distributed symmetric lesions involvement of resistant sites and history of rapid therapy is also to be unpredictable and poor. He is not likely to make a fit soldier. Recommended to be invalided out of service in medical category EEE."

10. On an examination of the aforesaid opinion of the classified Specialist of the Medical Board, we find that the disability 'VITILIGO-709' was detected within 12 days of enrollment. It is pertinent to note that the applicant was enrolled on 26.12.1994 and was admitted to Military Hospital Ranikhet on 07.01.1995 i.e 12 days of enrollment and there is no evidence of any precipitating or triggering factors for the disease. The Medical Board has therefore, rightly assessed the disability of the applicant as existed before entering into the service. The observations of Medical Board vide Part - III 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 pertinent to note that in the instant case, the disability of the applicant could not have arisen in 12 days of military training, and thus, can be presumed to have existed before entering into the service. The primary medical examination conducted at the time of enrollment of PBORs is not a rigorous medical examination procedure as followed during RMB/IMB, and that any disability which can escape the initial medical examination cannot be used as a tool to claim invalid pension at the stage of training period without even posting, to showcase any relation of invalidation or any link whatsoever to the military service. It is pertinent to record that just because of the error on the part of the Recruiting Medical Officer during the Initial Medical Examination of the applicant at the time of enrollment,

which declare the applicant fit for joining, does not ipso facto make an individual entitled for Invalid Pension.

12. 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 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.

13. 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."

14. 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.

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

16. Consequently, the present OA 2089/2019 is dismissed.

17. No order as to costs.

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

Pronounced in the open Court on this 22nd day of July, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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