

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

OA 508/2024 WITH MA 585/2024

Ex AC U/T Prakash Ranjan ... Applicant  
Versus  
Union of India & Ors. ... Respondents

For Applicant : Mr. Raj Kumar, Advocate  
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM :

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

ORDER

MA 585/2024

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. The MA stands disposed of.

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3. Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application seeking grant of disability pension and/or in alternative, invalid pension.

4. The applicant was enrolled in the Indian Air Force on 24.08.2020 and invalided out from service on 01.04.2021 under the clause, '*on having been found medically unfit for further service in IAF.*' 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 pre-existing at the enrolment stage, and that his disability was held to be NANA with assessment of 20% for lifelong.

5. 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.

6. 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.

7. 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 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.

8. 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 20% 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).

9. 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)*

10. 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 Part-II with heading ‘*Current Evaluation*’ as provided in the opinion of the Invalid Medical Board, titled as “*Summary and Opinion of Surg Capt P Vinny Wilson, Senior Advisor Medicine & Neurologist*” dated 22.10.2020, and the same is reproduced as under:

*“This 20 years old serving personnel, with no known comorbidities, presented with a history of sudden loss of consciousness during shaving at 2 ATS unit on 23 Sep 20 at 0400 hrs. The episode lasted for around 5 mins and was associated with frothing from mouth. The referring MO reported postictal amnesia in patient. Patient had similar complaints in past 4 years back for which no treatment was taken. He denies history of substance abuse, head trauma, encephalitis illness in the past. He denies history of similar complaints in the family. On evaluation his EEG shows generalized spike and wave discharges. CEMRI brain reveals focal FLAIR hyperintensity in Rt Periventricular white matter.”*

11. On an examination of the aforesaid opinion of the Classified Specialist of the Medical Board, we find that the

disability of the applicant has been present for 4 years before the enrollment of the applicant for Air Force, while being a dormant psychiatric disorder 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. As far as the reliance placed by the applicant on the judgement of Hon'ble Supreme Court in *Ex Rect Mithilesh Kumar V. UoI* (Civil Appeal 16438-16440/2017), and judgement of this Tribunal in *Bhagat Singh v. UoI & Ors.* [OA 1051/2016; Date of decision-06.12.2018] is concerned, we find that in both of the aforesaid cases, the disability was not existing before enrollment. However, in the instant case, the disability of the applicant was existing before enrollment, but the same was never treated. Similarly, the facts of *Ex Rect. Chena Ram v. 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.

17. 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.”*

18. With the issue of primacy of medical opinion no longer res integra as held by *Hon'ble Supreme Court in Ex CFN Narsingh Yadav v. 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.

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

20. Consequently, the present OA 508/2024 is dismissed.

21. No order as to costs.

22. Pending miscellaneous application, if any, stands closed.

Pronounced in the open Court on 30 day of April, 2025.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

*Akc*