

**ARMED FORCES TRIBUNAL
REGIONAL BENCH
JABALPUR**

CORAM :

**HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN GOPAL R, MEMBER (A)**

TA 94/2011

No 15422689A, Ex Rect Lomas Kumar

S/o Shri Santu Ram Sahu,
R/o Village Kurud, P.O. Charmudia,
District Dhamtari (Chattisgarh)

.....Applicant

Versus

- 1. Union of India,**
Through the Secretary,
MoD, Govt. of India, New Delhi.
- 2. COAS,**
Army Headquarters, DHQ, Post Office,
New Delhi.
- 3. Commandant,**
AMC Centre & School
Lucknow (U.P.).
- 4. Commanding Officer,**
AMC Centre & School
Lucknow (U.P.).

.....Respondents

For Applicant : Mr AK Gupta and Mr VK Napit, Advocates

For Respondents : Mr Aakash Malpani, Advocate holding brief of
Mr. HS Ruprah, CGSC

ORDER

1. Brief facts of the case are that the applicant was enrolled in Army Medical Corps (AMC) on 17.03.2005 as Driver/MT. While undergoing training at No. 1 Military Trailing Battalion, AMC Centre & College, Lucknow, was admitted to Base Hospital, Lucknow on 13.09.2005 as a case of **CNS (INV) GENERALIZED TONIC CLONIC SEIZURE WITH CALCIFIED GRANULOMA (RT) FRONTAL LOBE**. The Neurophysician of Command Hospital, Lucknow on 08.10.2005 had recommended the applicant for boarding out from service in category P5. The applicant was brought before Invaliding Medical Board (IMB) on 03.11.2005 at Base Hospital, Lucknow. The disability was held as neither attributable nor aggravated (NANA) by military service and the disability percentage was assessed at 50% for five years. The IMB proceedings had been approved by HQ UB Area, Bareilly on 21.11.2005 and the applicant was medically invalided out of service w.e.f. 09.12.2005 under Army Rule 13 (3) IV. The applicant had a total service of 8 months and 23 days at the time of invalidation from Army. The disability pension claim had been rejected by the competent authority as the disability was held as NANA.

2. The Counsel for the Applicant submits that after due physical and medical examination followed by written test, the applicant had been enrolled in the Army. While undergoing training the applicant was subjected to various physical tests and had completed 18 weeks of basic training. While being on Guard Duty on 13.09.2005, the applicant had fainted due to weakness and was shifted to Base Hospital, Lucknow. The applicant had been subjected to a CT scan on 16.09.2005 and later on classified as invalid and discharged from service on 09.12.2005. Before discharge the applicant was not issued with any Show Cause Notice (SCN) and was not afforded any opportunity to plead his case. The applicant had got a

CT scan from a private practitioner wherein the conclusion had been that the applicant's brain functions are normal. Despite the same, the applicant had been invalidated out. Hence, the discharge is arbitrary in nature and is against the principles of natural justice and is bad in law. This order of invalidation goes against the principles of natural justice. Hence, the OA had been filed with the following prayers:-

- (a) Issue of a writ of 'Certiorari' quashing the discharge order.
- (b) To allow the applicant to complete his training and recruit him in AMC.
- (c) To pay regular salary to the applicant and give him all consequential benefits.
- (d) Any other relief deemed fit in the circumstances.
- (e) To grant pension.

3. The Counsel for the Respondents states that the medical test regime followed while recruiting cannot detect diseases which are constitutional in nature and which can be detected only on the onset of symptoms. The claim that the applicant was medically fit when enrolled and during training, while on duty on 13.09.2005 he had fainted, is blatantly incorrect and is intended to misguide the Tribunal. The IMB had clearly stated that the admission to MH, Lucknow on 13.09.2005 was due to an attack of fits during sleep. Also, from the summary of the case, as part of IMB proceedings, it emerges that even prior recruitment and enrolment in the Army, the applicant had a history of head trauma in January 2005 due to a Motorcycle accident with a history of seizures.

4. With regard to the validity of CT scan conducted in civil hospital, after discharge from Army, at Modern Medical Institute, Raipur on 30.05.2006. The following is clarified:-

(a) The applicant was invalided out of service on account of 'CNS (INV) GENERALIZED TONIC CLONIC SEIZURE WITH CALCIFIED GRANULOMA (RT) FRONTAL LOBE' a diagnosis which was confirmed by various investigations/medical reports.

(b) The onset of applicant's ailment was started with SEIZURE WITH CALCIFIED GRANULOMA (RT) FRONTAL LOBE.

(c) CT scan dated 16.09.2005 taken at Command Hospital Central Command, Lucknow, was confined to *NCCT HEAD (Serial non-contrast axial scans of 3 mm thickness through posterior fossa and further 10 mm sections were obtained up to the skull vault).*

(d) CT scan taken on 30.05.2006 in the civil facility by the applicant was confined to scan of Brain – Plain & Contrast, that too after a gap of about 9 months which may not reflect the deformities, which was shown in the report of 16.09.2005.

5. As regard to the allegation of non-issue of SCN prior to invalidment, the applicant was invalided out of service under Army Rule 13 (3) IV where CO is competent authority to sanction his discharge and issue of SCN is not mandatory.

6. Considering the above, the invalidment of the applicant was fair and just. Hence, the OA deserves to be dismissed as it is devoid of merit.

Consideration

7. Heard both the parties and perused the documents placed on record.
8. As per the opinion of Classified Specialist (Medical & Neurology) of Command Hospital dated 08.10.2005 which forms part of the IMB proceedings, we find evidence that the onset of disability was prior enrolment in Army. The medical opinion is reproduced as under:-

“The patient 20 year old serving recruit presented with H/O Generalised Tonic Clonic Seizure on 13 Sep 2005 while sleeping (Noted by his friend). Patient had history of head trauma in January 2005 by a motorcycle accident. There is history of seizure in the past (04 month before). However, he was not been brought under medical observation. CECT head done on 16 Sep 2005 shows a calcified granuloma in Rt frontal lobe, no perilesional edema present. At present patient is asymptomatic with anti epileptic drugs.”

9. Acceptance of a disease/disability as attributable to or aggravated by military service is covered under Entitlement Rules (ER), 1982, which is applicable at that point of time when the applicant was invalided. As per Rule 14 (duly amended by Corrigendum dated 20.06.1996) of ER, 1982, in case of congenital, hereditary and constitutional diseases which are detected after the individual had joined service, entitlement to disability shall not be conceded unless it is clearly affected due to factors related to conditions of service. Hence, we hold that attributability to military service in respect of the applicant has not been conceded correctly. With regard to the question of the Primary Medical Examination, the disability could not have been detected by the Recruiting Medical Officer during the routine medical checkup as also constitutional ailments can be detected only on the onset of symptoms.

10. With regard to the CT scan carried out at Command Hospital, Lucknow on 16.09.2005 and a CT scan carried out in a civil establishment by the applicant after invalidation, on 30.05.2006, we observe the following: -

(a) Respondents have failed to state the reasons why the CT scan in civil was carried out after a gap of approximately 6 months from the date of invalidation.

(b) In the CT scan carried out by the Command Hospital, Lucknow, the CT protocol in terms of the size of the slices have been clearly mentioned whereas in the scan report of the civil, the same has not been found endorsed.

11. In view of the above, we tend to hold that due credence should be given to the CT scan carried out on the applicant by Command Hospital at Lucknow on 16.09.2005.

12. Though the initial prayer of the applicant was for retention in service later on, an additional prayer for grant of pension had been admitted vide order dated 15.12.2017. As per dispensation existing during the relevant period, as the applicant had been invalided on non attributable medical grounds, he is not entitled for invalid pension as the minimum period of qualifying service for grant of invalid pension is 10 years as per Regulation 198 of Pension Regulations for the Army, 1961, Part I. Though, the notification of abrogation of minimum length of service for grant of invalid pension has been made applicable to Armed Forces vide GoI, MoD letter No. 12(06)/2019/D(Pen/Pol) dated 16.07.2020, the same is not applicable in the *ibid* case as the dispensation is only applicable to Armed Forces personnel who were/are in service on or after 04.01.2019.

13. Hence, the T.A. is **dismissed**. No order as to costs.

Pronounced in Open Court on 25 May, 2023.

(LT GEN GOPAL R)
MEMBER (A)

(JUSTICE RAJENDRA MENON)
CHAIRPERSON