

E-Court**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI****ORIGINAL APPLICATION No. 120 of 2018**

Monday, this the 17th day of October, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Jadhav Rajaram Bhau, No 1082515A Ex Swr, R/o Village-Sonsal,
Tehsil-Kadegaon, District-Sangli, Maharashtra State.

..... Applicant

Ld. Counsel for the : None for the applicant.
Applicant

Versus

1. Union of India, Ministry of Defence, through its secretary,
New Delhi.
2. The OIC record, Armoured Corps Records, PIN-900476,
C/o 56 APO.
3. PCDA (Pension), Allahabad.

..... Respondents

Ld. Counsel for the
Respondents

: Shri AJ Mishra, Advocate
Central Govt. Counsel

ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- “(i) This Hon’ble Court be pleased to order directing the respondents to grant/pay disability pension under the Rules of the Pension Regulations of the Army, 1961.*
- (ii) this Hon’ble Court be pleased to set aside the impugned order dated 10th Sept, 2018 passed by respondent No 2.*
- (iii) Cost of this appeal be granted.*
- (iv) Such other and equitable order as the circumstances of the case may be granted.*

2. Brief facts of the case are that the applicant was enrolled in the Indian army on 22.06.1984 and was invalided out of service w.e.f. 29.11.1992 in low medical category ‘EEE’ due to ‘Neurosis’ and ‘Generalized Seizure’. The Invaliding Medical Board (IMB) has assessed his disability @ 40% for life neither attributable to nor aggravated by military service (NANA). Disability pension claim of applicant was rejected vide order dated Nil March, 1993. Thereafter, first and second appeal preferred against rejection of disability pension were rejected vide orders dated 12.09.2017 and 10.09.2018 respectively. It is in this perspective that this O.A. has been filed.

3. The applicant pleaded that he was enrolled in the army in medically and physically fit condition. It was further pleaded that a

member is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time of entry into service. In the event of his subsequently being invalided out from service on medical grounds, any deterioration in his health is to be presumed due to service conditions. He pleaded that applicant was under stress of service conditions which may have led to occurrence of the disability. He pleaded for disability pension to be granted to applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that as applicant was suffering from 'Neurosis' and 'Generalized Seizure' he was rightly discharged from service as the Psychiatric Specialist has recommended him to be discharged from service on the ground that he will not become an efficient soldier. He was admitted to Military Hospital, Bikaner a number of times and finally when he was referred to Army Hospital, Delhi Cantt, he was recommended to be discharged from service in medical category 'EEE' with 40% disability neither attributable to nor aggravated by military service. Learned counsel for the respondents further contended that since the medical board has recommended the disability to be NANA, the pension sanctioning authority has rightly rejected disability pension claim on the grounds of disability being neither attributable to nor aggravated by military service. He pleaded the O.A. to be dismissed.

5. We have heard learned counsel for the respondents and perused the material placed on record.

6. On careful perusal of the medical documents, it has emerged that applicant was enrolled on 22.06.1984 and during the course of his service, he was detected to be suffering from 'Neurosis' and 'Generalized Seizure' in the year 1991 while posted at Bikaner. He was treated at Military Hospital, Bikaner and thereafter, he was transferred to Army Hospital, Research and Referral (R&R), Delhi Cantt where Classified Specialist (Psychiatry) had endorsed the following remarks on the applicant:-

"Summary and opinion of Lt Col PC Madan, Classified Specialist (Psychiatry) of Army Hospital, R&R, Delhi Cantt dated 20.08.1992.

This soldier was initially hospitalised with complaints of headache and hypoesthesia of Rt leg and was thoroughly investigated at ARDC in Aug 91. His physical parameters were normal. He was depressed and anxietytic and somatic symptoms. Relevant lab investigations including haemogram, urine RE, Blood Sugar, and EEG were normal. He was treated with anxietytics and antidepressants with a satisfactory response. He was placed in low medical category 'CEE' 6/12 yrs w.e.f. 24.09.91 for Neurosis. On 28.10.91 he alleged to have had a seizure and was admitted to 187 MH. He had tongue bite during seizure and was transferred to CH (WC), Chandimandir where his tongue was sutured. In April 92 he was re-hospitalized with relapse. He had vague somatic symptoms in the form of headache and weakness. He informed that he had another seizure in Feb 92. He was transferred to AHDC for neurological evaluation. His EEG was found to be normal. His AFMSF-10 report dated 16 Apr 92 is highly uncomplimentary and has recommended invalidment from service. There is no past or family history of mental illness. He takes alcohol occasionally. No history suggestive of head injury or encephalitis. Physical parameters are within normal limits. Pulse-76/min, BP-110/70 mm hg. He is well in touch with reality. Mood is anxious and depressed. He lacks in confidence and says that because of fits he is unable to perform his duties. Sensorium is clear. He has been treated as a case of Neurosis with antidepressants and is taking anticonvulsants for seizures. Response to treatment has not been satisfactory. He is unlikely to make an efficient soldier and hence in the interest of the state as well as the individual he is recommended to be invalided out of service in medical category 'EEE'.

Disability: NEUROSIS".

7. Thereafter, his case was referred to Classified Specialist in Medicine and Neurology where Lt Col PVS Rana had endorsed the following remarks on the applicant:-

"Opinion of Lt Col PVS Rana, Classified Specialist in Medicine and Neurology of Army Hospital, Delhi Cantt-10 Dated 09 Oct 92.

This individual has been recommended category 'EEE' for Neurosis (Ref Psychiatrist opinion dated 20.08.92). Perusal of document revealed that he is having generalised clonic-tonic seizure (1st episode on 28.10.91, Total episode three last one in Feb 92). He has been fully investigated earlier. No evident symptomatic cause detected. His EEG was also normal. Clinical examination revealed no lateralised neurological deficit. Fundi-NAD. There is no evidence of drug toxicity. CT Scan done on 28.9.92-NAD. Recommended to be released in cat 'EEE'. Advised : Precautions-not to swim/drive/work with machine which can endanger his life. Not to handle firearm."

8. Since the applicant was recommended to be in medical category 'EEE', an Invaliding Medical Board (IMB) was carried out at Military Hospital, Bikaner in October 1992 which recommended him to be discharged from service in medical category 'EEE' with 40% disablement for life neither attributable to nor aggravated by military service. He was also advised not to swim/drive/work with machine which can endanger his life as also not to handle firearm.

9. Since it is well known that mental disorders can escape detection at the time of enrolment hence benefit of doubt cannot be given to the applicant merely on the ground that the disease could not be detected at the time of enrolment. Since there is no causal connection between this disease and military service and the disease has manifested during the course of his service, hence we are in agreement with the opinion of the IMB that the disease is NANA.

10. Therefore, there appears to be strong weightage in the stand of the respondents that applicant's disability 'Neurosis' and 'Generalized Seizure' are not connected to military service as

opined by the IMB. Further, the Appellate Committee on First Appeals (ACFA) has also examined applicant's disability in the light of relevant rules and finally rejected being neither attributable to nor aggravated by military service. We are in agreement with the opinion of IMB proceedings and First Appellate Committee stating that the applicant's disabilities are NANA and he is not entitled to disability pension.

11. Apart from it, in identical factual background this Tribunal dismissed T.A. No. 1462/2010, **Bhartendu Kumar Dwivedi vs. Union of India and others**, vide order dated 23.05.2011 wherein applicant was enrolled on 21.01.2000 and was discharged on 27.04.2000 as he was suffering from 'Schizophrenia'. Said disability was assessed @ 80% for two years and it was opined by the Medical Board to be neither attributable to nor aggravated by military service. Said order of this Tribunal has been upheld by the Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 preferred against the aforesaid order, has been dismissed on delay as well as on merits vide order dated 20.11.2017.

12. Additionally, in Civil Appeal No 7672 of 2019, **Ex Cfn Narsingh Yadav vs Union of India & Ors**, it has again been held by the Hon'ble Supreme Court that mental disorders cannot be detected at the time of recruitment and their subsequent manifestation (in this case after about six months of recruit service) does not entitle a person for disability pension unless there are

very valid reasons and strong medical evidence to dispute the opinion of Medical Board. Relevant part of the aforesaid judgment is as given below:-

“20. In the present case, clause 14 (d), as amended in the year 1996 and reproduced above, would be applicable as entitlement to disability pension shall not be considered unless it is clearly established that the cause of such disease was adversely affected due to factors related to conditions of military service. Though, the provision of grant of disability pension is a beneficial provision but, mental disorder at the time of recruitment cannot normally be detected when a person behaves normally. Since there is a possibility of non-detection of mental disorder, therefore, it cannot be said that ‘Paranoid Schizophrenia (F 20.0)’ is presumed to be attributed to or aggravated by military service.

21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such report unless there is strong medical evidence on record to dispute the opinion of the Medical Board. The Invaliding Medical Board has categorically held that the appellant is not fit for further service and there is no material on record to doubt the correctness of the Report of the Invaliding Medical Board.”

13. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

14. No order as to costs.

15. Miscellaneous applications, pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated 17.10.2022

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