

COURT NO 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFERRED APPLICATION No 690 of 2010

Thursday, this the 30th day of August, 2018

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

No 15501473 Ex Sepoy Tikam Singh, son of Shri Gitam Singh,
Resident of Village-Jautana, Post-Fatehpur Sikari, District-Agra
(U.P.).

...Petitioner

Counsel for the petitioner: **Col (Retd) Y.R. Sharma**, Advocate

Versus

1. Union of India through Secretary Ministry of Defence,
Government of India, New Delhi.
2. Senior Records Officer, Armoured Corps Records C/O 56
APO.
3. Comptroller General of Defence Accounts, Allahabad.
4. Additional Director General Personnel Services, Adjutant
General’s Branch Integrated HQ of MoD (Army), DHQ, PO-
New Delhi-110011.

.... Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**,
Respondents Central Government Counsel

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The petitioner had filed Civil Misc Writ Petition bearing No 22601 of 2009 in the High Court of Judicature at Allahabad which has been transferred to this Tribunal in pursuance to powers conferred under Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No. 690 of 2010. The petitioner has prayed for the following reliefs:-

(a) Issue a writ, order or direction in the nature of certiorari quashing the order dated 06.10.2006 passed by the respondent No 2 intimating the decision of CGDA of rejection of disability pension without annexing the said order to CGDA, appellate order dated 29.08.2007 passed by the respondent No. 4 rejecting the appeal for disability pension of the petitioner and second appellate order dated 16.02.2009 passed by the respondent No. 1 in illegal and arbitrary manner.

(b) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to forthwith release the disability pension in favour of the petitioner.

(c) Issue a writ, order or direction in the nature of mandamus commanding the respondents to re-instate the petitioner in service.

(d) Issue any other writ, order or direction as this Hon’ble Court may deem fit and proper under the circumstances of the present case.

(e) To award the costs of the petition in favour of the petitioner.

2. The facts bereft of unnecessary details are that the petitioner was enrolled in the Armoured Corps of the Indian Army on 27.06.2005. During the course of basic military training he was

admitted to Military Hospital, Ahmednagar on 01.10.2005. The petitioner was again admitted to Military Hospital on 02.12.2005 for various diagnosis. On 14.01.2006 the petitioner was admitted to the Hospital for diagnosis "Adjustment Disorder (F-43.2)". Thereafter investigations were carried out in Command Hospital, Southern Command, Pune and he was declared unfit for further continuance in service due to ibid disease. Accordingly the petitioner's Invaliding Medical Board was held at Command Hospital, Southern Command, Pune on 17.03.2006 which recommended the degree of disablement at 1-5% for two years neither attributable to nor aggravated by military service. Disability pension claim was rejected vide order dated 09.11.2006. The petitioner had submitted his first appeal to the First Appellate Authority which was rejected vide order dated 29.08.2007 with the remarks that 'disability pension is entitled to an individual who is invalided out of service on account of disability which is conceded as attributable to or aggravated by military service.' The petitioner, despite being advised to forward second appeal, preferred Civil Writ Petition No 54722 of 2007 in the High Court of Judicature at Allahabad on 31.10.2007 for grant of disability pension which was dismissed vide order dated 05.11.2007 on the ground that he did not avail alternative remedy i.e. second appeal to Defence Minister's Appellate Committee. Thereafter the petitioner preferred the second appeal on 22.02.2008 which was also rejected vide order dated 16.02.2009 on the ground that the

disease 'Adjustment Disorder (F-43.2)' is neither attributable to nor aggravated by military service.

3. Ld. Counsel for the petitioner contended that the petitioner was not suffering from any disease at the time of enrolment therefore the disease will be deemed to have arisen during service period and should be aggravated by military service. While rejecting the appeals for grant of disability pension, the said point has not been taken into consideration and the authorities have given no cogent reason for rejecting the disability pension claim. Ld. Counsel for the petitioner submitted that at the time of Invaliding Medical Board, on page 5 of Medical Board Proceedings question No 2 was 'Did the disability exist before entering in service?', the answer given by the Invaliding Medical Board was "No". He further relied upon Pension Regulations for the Army 1961 (Part-I) and numerous judgments of Hon'ble Supreme Court for grant of disability pension. On the point of attributability of the disease, the Ld. Counsel also submitted that whether a disability is attributable to or aggravated by the military service, has to be determined under the Entitlement Rules for Casualty Pensionary Awards 1982. According to the Ld. Counsel, the opinion of the Medical Board in respect of attributability does not get supremacy and it is to be treated only of recommendatory nature. He submitted that the Entitlement Rules have to be applied to the facts and circumstances of each case to determine the attributability of a disease.

4. On the other hand, Ld. Counsel for the respondents pleaded that since the petitioner's disability is neither attributable to nor aggravated by military service, hence the claim for disability pension has rightly been rejected. Ld. Counsel for the respondents further submitted that the petitioner was suffering from "Adjustment Disorder (F-43.2)" but it could not be detected on preliminary medical examination at the time of enrolment being constitutional in nature and symptoms of the disease exposed when the petitioner underwent rigorous military training. He contended that the Invaliding Medical Board opined the disease to be neither attributable to nor aggravated by Military Service and thus, the petitioner was rightly denied disability pension.

5. We have heard Ld. Counsel for the petitioner and Ld. Counsel for the respondents and perused the material placed on record.

6. In medical literature an adjustment disorder is characterized by the development of emotional or behavioral symptoms in response to an identifiable stress occurring within 3 months of the onset of the stress. A stress is anything that causes a great deal of stress in a person's life. It is to be termed as a finite abnormality of structure or function with an identifiable pathological or clinico-pathological basis, and with a recognizable syndrome or constellation of clinical signs. This has since been widened to embrace subclinical disease in which there is no tangible clinical syndrome but which are identifiable by chemical, haematological, biophysical, microbiological or immunological means. In this

background when we analyse the Invalidation Medical Board of the applicant the following facts emerge:-

(a) That the disability first started in October 2005 i.e. about 3^{1/2} months after his enrolment.

(b) That he used to recover whenever he was removed from his training area. The relevant extract of opinion of Lt Col M Bajpayee, Classified Specialist (Psychiatry) dated 03.03.2006 being relevant is reproduced as under:-

“On transfer to CH (SC) for further evaluation all investigations were normal. Evaluation by Psychiatrist revealed evidence of low mood, fatigue and no interest in training since his admission to the Centre.

He was ambivalent about further service. He found it hard to meet-up with the rigor of service. The discipline and regulation enforced were frustrating for him. He became anxious with features of apprehensive tremulousness and later bouts of syncope.

In view of above, his demotivation for further service, 6 months of service, frequent hospitalization and recovery on being removed from his area of training (Has not had a bout of syncope since 20.01.06). He is unlikely to be a fit and useful soldier.

Thus keeping in mind AO 03/2001 it is recommended that he be invalided out of service in LMC S5 as a case of ADJUSTMENT DISORDER.”

(c) That as per IMB opinion the disability was constitutional in nature.

7. We are clearly of the view that the Medical Board is an expert body and they have taken into consideration all relevant factors and essential practice before arriving at their opinion. Going by the opinion of the Psychiatrist in the IMB we are convinced that the disability which started about 3^{1/2} months after enrolment is constitutional in nature and neither attributable to nor aggravated by the military service. In our view the disease may be

termed as constitutional disease as it occurred within a short span of about three and half months after start of basic military training.

8. In sum and substance, the O.A. is devoid of merit and is liable to be dismissed. It is accordingly **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : 20 August, 2018
gsr