

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 530 OF 2018**Wednesday, this the 12th day of December 2018**"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"**

Gopal Sule Bhagat (No 15444277Y Ex Recruit/NA) S/O Shri Ramji Sule Bhagat, R/O Village-Gunj, Post-Karli, District-Washim-444503, Maharashtra.

.....Applicant

Ld. Counsel for the : **Shri R. Chandra**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office-New Delhi-11.
3. The Officer-in-Charge, Army Medical Corps Records, Lucknow-226002 (UP).
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the : **Shri Amit Jaiswal**,
Respondents. Central Govt. Standing Counsel.

ORDER

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

1. Being aggrieved by denial of disability pension, the applicant has filed the present original application under Section 14 of the Armed Forces Tribunal Act, 2007 wherein he has sought the following reliefs:-

- (a) *The Hon’ble Tribunal may be pleased to set aside the order dated 23.04.2016 (Annexure A-1).*
- (b) *Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 11.02.2014 along with the interest at the rate of 24% per annum.*
- (c) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Brief facts of the case are that the applicant was enrolled in the Army Medical Corps (AMC) as Nursing Assistant (NA) on 29.06.2013 and invalided out of service w.e.f. 10.02.2014 (FN) in low medical category S5H1A1P1E1 having rendered 07 months and 11 days of service due to “UNSPECIFIED PSYCHOSIS”. The IMB of the applicant held on 10.01.2014 at Command Hospital, Lucknow assessed applicant’s disability @ 40% for life neither attributable to nor aggravated by military service (NANA). Case for grant of disability pension in respect of the applicant was placed before the competent authority which was rejected vide order dated 18.07.2014 mentioning therein “The case is unfit for admission of disability

pension". Subsequently the applicant filed O.A. No. Nil of 2016 in this Tribunal for grant of disability pension. The said O.A. was rejected on 19.10.2016 on the ground of non availing of alternative remedy under the provisions of Section 21 of Armed Forces Tribunal Act, 2007. Thereafter the applicant submitted first appeal dated 26.03.2017 which is still pending. Hence this O.A.

3. Ld. Counsel for the applicant pleaded that the applicant 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. 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 the disability of the applicant is due to stress and strain of military service while undergoing basic military training and it should be accepted as attributable to military service. He pleaded for disability pension to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted the applicant is not entitled to disability pension in terms of Rule 173 of Pensions Regulations for the Army 1961 (Part-I) which stipulates that, "unless otherwise

specifically provided, a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over but in the instant case though the disability of the applicant has been assessed @ 40% for life but it is neither attributable to nor aggravated by military service. Therefore the applicant is not entitled to disability pension. Ld. Counsel for the respondents has relied upon the Apex Court judgment in the case of ***Union of India & Ors vs Damodaran AV***, SLP (C) No 23727 of 2008 which expressed that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence. In the case in hand he submitted that since the IMB of the applicant has opined the disability as neither attributable to nor aggravated by military service hence he is not entitled to disability pension. He pleaded the O.A. to be dismissed.

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

6. At the very outset it has been observed that the applicant was suffering from "UNSPECIFIED PSYCHOSIS" on 10.08.2013 i.e. within 42 days from the date of enrolment while he was undergoing basic military training. The petitioner was ultimately invalided out of service on

10.02.2014 (FN) by a duly constituted Invaliding Medical Board (IMB) held on 10.01.2014.

7. Since the disease as per IMB has started within a short span of 42 days of enrolment, we feel it imperative to quote summary and opinion given by Col Jaideep Gambhir, Senior advisor (Psychiatry), Command Hospital, Lucknow dated 23.12.2013 in respect of the applicant while admission in the hospital, as under:-

"This 19 yrs old recruit of AMC was admitted to this hospital on 10 Aug 13 at the behest of his AMA for abnormal behaviour. He was non attentive and took no interest in training activities. Indl offered no complaints on admission. He was uncooperative and gave variable answers to normal questions (date of joining for trg, etc). A detailed history revealed that indl had joined for trg at AMC Centre on 28 Jun 13 and was apparently alright till about 3-4 days prior to hospitalization. As per his colleagues indl was noted to be behaving abnormally-nor wearing his uniform properly, threw his clothes, ATM, used to pull up his pants and tie a handkerchief as a bandage on his leg and was noted to be smiling/muttering to self and not sleeping properly at night. He did odd things like spitting his food in his hands and then throwing it away. At times he made aggressive postures towards his colleagues and stated "Main chinti ghoomaonga toh sab bachhe bhaag chaayenge." His abnormal behaviour was informed telephonically to his father by his colleagues who apparently told them that indl must not be sleeping well and should be given 'sleeping pills'. As per indl's colleagues they have completed 4 weeks training and there have been no unusual stressors. No h/o indl having been troubled or man handled in any way. No h/o alcohol/psychoactive substance abuse.

Past/Family/Personal History

As per indl's father the indl had suffered from some 'febrile illness' about a year ago and had been given some sleeping pills by a local doctor. His father was evasive and denied h/o indl having suffered from any mental illness. No h/o any major physical illness in the past. Hails from xxxxxx and performance under stress unsatisfactory.

Condition on Admission

Xxxxxxx He displayed silly behaviour, did not follow service/social etiquettes, was fidgety and restless and avoided eye contact. Indl spoke coherently but irrelevantly at times, gave variable answers, speech was laconic with increased latency and decreased spontaneity and there appeared to be a poverty of thoughts content. He displayed a shallow and inappropriate affect. His attention was arousable and concentration fairly sustained and biodrives were stable except for disturbed sleep.

Xxxxxxxxxx

Course in the Hospital

Ward observation and serial interviews revealed indl to be remaining aloof and socially withdrawn, had a shallow and inappropriate affect, irrelevant speech with formal thought disorder in the form of muddled thinking, lack of clarity with difficulty in following train of thoughts. There were no features of Schizophrenia or persistent/pervasive change of mood. Indl was managed with atypical antipsychotics, short course of benzodiazepines, indl counselling and supportive psychotherapy. He has shown improvement in his behaviour with therapy.

Opinion

This 20 yrs old recruit manifested with acute onset psychotic illness within 06 weeks of his trg period characterized by disorganised behaviour, irritability, unprovoked aggression, laughing/muttering to self, irrelevant speech, formal thought disorder and disturbed sleep leading to significant socio occupational impairment. Indl has been diagnosed and managed as a case of Unspecified Psychosis (ICD-F-29).

In view of the above and keeping in mind that the indl has suffered from a psychotic illness in the early part of his training this indl will be an unfit soldier and a liability for the organization. He is unfit for retention in service as per the existing guidelines (DGAFMS Memorandum No 171/2002). Hence recommended to be invalided out of service in LMC S5-Unfit for military training/duties."

8. There is hard evidence that the petitioner's behaviour was abnormal at a very early stage of enrolment and training i.e. within 42 days of enrolment and thereafter he was referred for psychiatric evaluation. Therefore there

appears to be strong weightage in the stand of the respondents that the disease was constitutional in nature and that psychiatric ailment cannot be detected during enrolment medical board. Additionally, a recruit is akin to a probationer and hence prima facie the respondents as an employer have a right to discharge a recruit who is not meeting the medical requirement of military service. In view of the foregoing and the fact that the disease manifested within 42 days of enrolment we are in agreement with the opinion of IMB that the applicant was suffering from "Unspecified Psychosis" before enrolment and thus the disability cannot be accepted as attributable to or aggravated by military service.

9. Apart from, in similar factual background Co-ordinate Bench of this Tribunal dismissed T.A. No. 1462/2010 vide order dated 23.05.2011 wherein the applicant was enrolled on 21.01.2000 and was discharged on 27.04.2010 as he was suffering from Schizophrenia which is alike "Unspecified Psychosis". 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 Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 was dismissed on delay as well as on merits.

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

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: December, 2018
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