

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 29 of 2018**Thursday, this the 03rd day of January, 2019**"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**
Hon'ble Air Marshal BBP Sinha, Member (A)"

No 14542774H Ex Recruit Harendra Kumar S/O Shri Bishamber Singh, R/O Village-Nagla Mohan, Post-Krshanda, District-Hathras-281306 (UP).

..... Applicant

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

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office New Delhi- 110011
3. The Officer In-charge, Signal Records, Jabalpur (MP)
4. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad, U.P.

.....Respondents

Ld. Counsel for the: **Shri Amit Jaiswal**
Respondents. Counsel for the respondents

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

1. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension.

(i) The Hon’ble Tribunal may be pleased to set aside the order dated 13.01.2014 (Annexure A/1), decision of the respondents declining to grant disability pension to the applicant.

(ii) The Hon’ble Tribunal may be pleased to set aside the finding of the Invaliding Medical Board holding the disability as neither attributable to nor aggravated by military service.

(iii) Hon’ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 20.10.1982 to 20.10.1984 along with the interest at the rate of 24% per annum.

(iv) 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. The brief facts of the case are that the applicant was enrolled in the Indian Army on 01.08.1981 in Corps of EME and was invalided out from service on 19.10.1982 in low medical category ‘EEE’ under Rule 13 (3) of the Army Rules, 1954 due to the disability of ‘PERSONALITY DISORDER (IMMATURE PERSONALITY ICD-301 (d)’. At the time of invalidation he had rendered a total of 01 year, 02 months and 18 days of service in the Army as a recruit. The Invaliding Medical Board (IMB) assessed the disability of the applicant as 20% for two years

neither attributable to nor aggravated by Military service (NANA). Disability pension claim was rejected by the PCDA (P), Allahabad and communicated to the applicant vide letter dated 24.08.1983. The applicant preferred an appeal against rejection of disability pension which was also rejected vide order dated 16.07.1985. Thereafter the applicant made several correspondence which were replied by the respondents. Lastly on preference of RTI the applicant was provided relevant documents and on the basis of these documents the applicant filed the present O.A. for grant of disability pension.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and invalided out of service in low medical category, his disability should be considered as attributable to military service and he should be granted disability pension. He further submitted that there is a causal connection between service of the applicant and the disability as it occurred while on duty and there was no note in his service documents with regard to suffering from any disability at the time of enrolment. Relying upon the Hon'ble Apex Court judgment in the case of ***Dharamvir Singh vs Union of India & Ors***, reported in (2013) 7 SCC 316, Ld. Counsel for the applicant vehemently argued that the disease of the applicant is principally due to stress and strain of military service and should be considered as aggravated by military service.

4. Per contra the respondents have filed the counter affidavit denying the claim of the applicant. It has been pleaded by the respondents that the applicant was invalided out of service in low medical category 'EEE' under Army Rule 13 (3) due to the disability of 'PERSONALITY DISORDER (IMMATURE PERSONALITY ICD-301 (d))' by a duly constituted Invaliding Medical Board and the Board opined that the disability is neither attributable to nor aggravated (NANA) by military service as the disability is a constitutional disorder. He further submitted that since the IMB has considered the disability of the applicant as neither attributable to nor aggravated by military service, PCDA (P), Allahabad and the appellate authority has rightly rejected the disability element claim giving due weightage, value and credence to the opinion of the IMB which is an expert body and who examined the applicant physically. He therefore pleaded the O.A. to be dismissed.

5. We have given our anxious consideration to the material placed on record and the arguments by both the Ld. Counsels. The applicant was enrolled on 01.08.1981 and for the first time the disability of the applicant was detected on 10.05.1982 i.e. within one year from the date of enrolment. During applicant's admission in the hospital, Senior Advisor Medicine has endorsed the following opinion on his condition:-

"The unit reported that the efficiency of the rect was very poor. He was inattentive, mentally perturbed and always looked anxious. He would use abusive and threatening language to his

superiors. He quarreled with his class mates and misbehaved with his superiors. Not willing to serve. xxxxxx

Xxxxx Speech is consistent and shows buoyant self image. No psychotic feature. His basic personality is inadequate and immature. Emotionally unstable and aggressive, seeks for immediate gain. Lacks in adequate insight.

Individual for invalidation on psychiatric ground. There is no medical disability to account for his psychiatric illness."

We further take note of the opinion of Classified Specialist (Psychiatry) which is as under:-

"This is a case of PERSONALITY DISORDER (Immature Personality) (ICD No-301 d), is a 20 years old EME/Rect with 10 months of service manifesting in episodic aberrant behavior. His efficiency and performance in training has been reported by the unit is very poor. He will use abusive and threatening languages with his class mates. In the hospital he has been found of unstable disposition with arrogant and erratic conduct. He exhibits constitutional instability, emotional immaturity and disordered judgment. Shows lack of insight and inability to learn from experience and adjust to discipline, lack of emotional control brings him in conflict with others. Emotionally he is unstable and aggressive. He craves for immediate gain rather than a remote one. He has not been benefitted from psychotherapeutic intervention. Due to nature of illness he is unlikely to make an able, fit and efficient soldier and is considered unfit for further military service. Recommended medical category EEE."

6. In view of the above, we are of the considered view that the applicant is not suffering from any disease but only with a 'Personality Disorder (Immature Personality)' which is constitutional in nature. Hence to decide the attributability factor the only legal issue before us is that the Invaliding Medical Board (IMB) has given valid reasons to declare his disability as NANA. In this particular case we have found that the IMB has given adequate reasons to justify NANA and we are satisfied with the same. Additionally a recruit is akin to a probationer and if the behavior of a recruit is abnormal and is hampering his

progression in training then the respondents as employers have every right to reject the probationer/recruit from training and discharge him.

7. Army is a combatant force and mental and physical fitness both are a must for a recruit. Since the disability of the applicant is of a personality/psychiatric nature and could not have been detected at the time of enrolment, we by no stretch of imagination can make the same as attributable to or aggravated by military service particularly so when it has manifested within about 09 months of training.

8. As a result of above discussions O.A. lacks merit and deserves to be dismissed.

9. Accordingly, the petition fails and is hereby **dismissed**.

There shall be no order as to cost.

(Air Marshal BBP Sinha)
Member (A)

Dated: January, 2019
gsr

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