

Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 458 of 2020

Thursday, this the 04th day of March, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex AC (U/T) Desh Deepak (No 8947242-S) son of Heera Lal Yadav, resident of village & post-Palia Khas, Tehsil-Bilthara Road Balia, District-Balia (UP)-22718.

.... Applicant

Ld. Counsel for the: **Applicant in person.**
Applicant

Versus

1. Chief of the Air Staff, Air Head Quarters Vayu Bhawan, New Delhi-110011.
2. OIC-Air Force Record Office, Pension and Welfare Wing (ODP) Subrato Park, New Delhi-110010.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

... Respondents

Ld. Counsel for the: **Shri Ashish Kumar Singh,**
Respondents Central Govt Counsel.

ORDER

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

- (I) *Issue/pass an order or direction of appropriate nature to the respondents to quash/set-aside the Air Headquarter letter No HQ/99798/2/8947242/DAV/DO dated 09.04.2013 (Annexure No A-1) and his First Appeal also rejected vide Air HQ letter No Air HQ/99798/5/45/13 AC (U/T) DP/DAV dated 22.05.2014 (Annexure No A-2) being per se illegal and without application of mind.*
- (II) *Issue/pass an order or direction of appropriate nature to the respondents to grant the entitled to the extent of 40% and the same be 'rounded off' to 50% disability pension to the applicant from 17.03.2013 for life to the applicant, as a matter of right as provided Govt of India letter No 1(2)/97//D (Pen-C) dated 31 Jan 2001 (Annexure No A-7) supported by the position held by the Supreme Court.*
- (III) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (IV) *Allow this application with costs.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 26.09.2012 and was invalided out from service w.e.f. 16.03.2013 in low medical category '(S5)' due to **'Adjustment Disorder with Predominant Disturbance of Conduct'**. The Release Medical Board (RMB) 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 09.04.2013. Thereafter, appeal filed against rejection of disability pension claim was also rejected vide

order dated 22.05.2014. It is in this perspective that this O.A. has been filed.

3. Learned counsel for the applicant pleaded that applicant was enrolled in the Indian Air Force 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 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 applicant having been enrolled on 26.09.2012 was admitted to SMC, AF Station Tambaram on 07.01.2013 on account of having frequent episodes of severe headache with vomiting, destructive, depressive thoughts of suicide tendencies. He was transferred to Command Hospital, Bangalore on 11.01.2013 for psychiatric evaluation and on investigation he was found to be suffering from '**ADJUSTMENT DISORDER WITH PREDOMINANT DISTURBANCE OF CONDUCT**'. He was treated by Psychiatrist on 06.02.2013 and on his recommendations, he was invalided out of service on 16.03.2013 in medical category 'S5'. 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 both sides and perused the material placed on record.

6.On careful perusal of the documents, it has emerged that applicant was enrolled on 26.09.2012 and during basic military training on 07.01.2013, he was admitted to hospital on account of his abnormal behaviour. He was referred to Psychiatrist Specialist who after investigation gave following report on applicant's disease:-

"This 19 years old Rect with about 06 months of trg was hospitalised on 08 Oct 2010 for chest pain (INV). Evaluated by Medical Spl with Lab INV and NCCT brain and NCCT chest with no sign of abnormality except patchy fibrosis in apical lobe of (Lt) lung. As patient exhibited abnormal behaviour in the form of fearfulness, emotional liability, poor eye contact and disturbed sleep was sent for psychiatric evaluation.

Detailed evaluation revealed indl in past one yr was having GI upset hence was on medication (Olfacin, Omiprazole, Pentaprazole, Rabiprazole & NSAIDS) for past few weeks before hospitalisation and felt as if some one is holding him, had thought block, believed people talk about him plan to harm him (even tried to hear & occasionally confronted them). He felt people in vicinity can read his mind and his thoughts.

Belongs to Raibareilly distt of U.P. from agrarian background. Parents healthy. Birth order denies stressor in psychosocial sphere. Educated upto 12th. Joned EME centre on 06 Apr 2010. Hospitalised twice in recent times for some physical disability. Unmarried and denies any home/heterosexual exposure. Premorbidly has introvert

traits. AFMSF-10 dated 31 Oct 2010 mentions non drinker and below average competence.

Physical examination, detailed haematological, biochemical & serological INV were normal, NCCT brain was normal. NCCT chest showed fibrons (Lt) lung apical area.

Psychiatrically had mild, PMA, Mood & affect perplex, speech-low tone, with Latino Harboured delusions of persecution and reference had thought block and thought reading with lack of insight and disturbed biodrives.

Managed as a case of Schizophrenia with antipsychotics, and other diversional measures with gradual but satisfactory response. In view of indl being Rect with barely 06 months of trg, major psychotic illness requiring long term treatment and follow up, residual symptoms, AO 9/2007/DGMS and DGAFMSF memorandum 171 he is unfit for retention in service.

Recommended

1. To be invalided out of service in S5.”

7. Since the applicant, being a recruit, was recommended to be in Category S5, an Invaliding Medical Board (IMB) was carried out at Military Hospital, Secunderabad on 04.01.2011 which recommended him to be discharged from service in medical category S5 with 40% disablement for life neither attributable to nor aggravated by military service. He was also advised periodic review by Psychiatrist.

8. The applicant, as a recruit, developed symptoms of this disease for the first time after six months of enrolment. Six to seven months period as a recruit appears to be too short a period to link this disability with stress and strain of service. Therefore, there appears to be strong weightage in the stand of the respondents that applicant's disability 'SCHIZOPHRENIA F-20.0' is 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. 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 about six months of enrolment, we are in agreement with the opinion of IMB that the applicant's disability is neither attributable to nor aggravated by military service and he is not entitled to disability pension.

9. 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.

10. 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.”

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

12. No order as to cost.

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

Dated: 15th December, 2020

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