

RESERVED
Court No.1

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

Original Application No 272 of 2017

Monday, this the 22nd day of October 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

No. 15418450A Ex Rect Pramod Kumar Ram son of Sri Lallan Ram, resident of 75A, Harikanj Galli, Ex Servicemen, Mohanlalganj, Lucknow, U.P.-226001.

..... Applicant

Ld. Counsel for the: **Shri V.P. Pandey**, Advocate
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, Integrated Head Quarter, Ministry of Defence, (Army), South Block, New Delhi-110011.
3. Officer In-Charge, Army Medical Corps, Sena Chikitsa Abhilekh Karyalaya, PIN-900450, C/O 56 APO.
4. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the :**Shri A.N. Tripathi**
Respondents Central Govt Counsel.

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

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

- (i) *Issue/Pass an order by setting aside the impugned rejection order of disability pension dated 11.08.2005 contained as Annexure A-I.*
- (ii) *To pass an order or direction to the respondents granting disability pension to the applicant from the date of retirement.*
- (iii) *Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (iv) *Cost of the appeal be awarded to the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 17.08.2003 and invalided out of service after rendering only 03 months and 24 days of service on 10.12.2003 in low medical category **S5H1A1P1E1** due to disease ‘**MANIC EPISODE (ICD F 30)**’ with disability @ 15-19% for life neither attributable to nor aggravated by military service.

3. On account of having abnormal behaviour i.e. speaking excessively and irrelevantly, gesticulating, running purposelessly in the unit and sleeping less, the applicant was admitted in the Command Hospital (CC) Lucknow on 29.08.2003 for psychiatric evaluation and

was diagnosed as Manic Episode. The Invaliding Medical Board (IMB) held on 06.11.2003 recommended the applicant to be discharged from service and sent to home with escort for further handing over to NOK. Later, disability pension claim preferred by the applicant was rejected by PCDA (P), Allahabad vide order dated 11.08.2005 on the ground of disability being NANA. The documents filed on record reveal that no appeal was submitted to the appellate authority before filing of this O.A.

4. Ld. Counsel for the applicant submitted that the applicant was enrolled in the Army in medically and physically fit condition. It was further submitted that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. The Ld. Counsel further submitted that the applicant was invalided out in medical category S5H1A1P1E with disability element @ 15-19% for life as such in view of Hon'ble Apex Court judgment in the case of **Sukhvinder Singh vs. Union of India**, reported in (2014) 14 SCC 364, he is entitled to grant of disability pension.

5. On the other hand, Ld. Counsel for the respondents submitted that Rule 173 of Pension Regulations for the Army 1961 (Part-I) provides that 'unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by military service and is assessed at 20% or over'. He further submitted that in the case in hand the disability '**MANIC EPISODE (ICD F 30)**' was viewed by duly constituted IMB as NANA by military service and assessed applicant's disability @ 15-19% for life, hence the applicant is not entitled to disability pension. Accordingly, the pension sanctioning authority has rightly rejected claim for grant of disability pension in view of disability of the applicant being NANA. It is pertinent to mention here that after his discharge applicant for the first time raised his claim before competent authority after about 13 years.

6. We have heard Ld. Counsel for the parties and perused the material placed on record. We have also gone through the IMB.

7. On careful perusal of the record it emerges that the applicant was enrolled in Army Medical Corps (AMC) on 17.08.2003 and referred to Command Hospital (CC), Lucknow on 29.08.2003 for psychiatric evaluation i.e.

exactly after 12 days of joining the service. On admission in the hospital, the applicant was found in the following condition as expressed by Maj J Gambhir, Graded Specialist Psychiatry, Command Hospital (CC) Lucknow:-

'MSE revealed a young recruit who displayed a disinhibited behaviour and increased psychomotor activity. He made odd gestures, sang songs on his own, spoke irrelevantly at a fast rate and mood was very happy with affect being shallow and varying from unduly cheerfulness to irritability. Expressed an inflated sense of self esteem and worth. There were no hallucinations or 1st rank symptoms of Schizophrenia. His attention was arousable and concentration ill sustained as indl was easily distractible. Indl lacked insight, had impaired social judgment and disturbed biodrives.'

8. After admission in the hospital, the applicant's condition was thoroughly investigated and Maj J Gambhir, the Graded Specialist Psychiatry gave further opinion in the following manner:-

'This 19 yrs old recruit is a case of Manic Episode (ICD F 30) who manifested with acute onset behavioural abnormality characterized by disinhibited over activity, elated effect, verbosity, inflated sense of self esteem, lack of insight, disturbed biodrives and disruption of socio occupational functioning. There was no past/family h/o mental illness or alcohol /psychoactive substance abuse. Indl has shown a response to therapy and has regained partial insight. In view of the above and keeping in mind the psychotic dimension of his illness which occurred in the first few weeks of trg this indl is unlikely to become a fit soldier and productive member of the armed forces. He would be a liability to the organization. Hence recommended to be invalided out of service in classification S5- Psychologically unfit for all military duties'.

9. The above opinion of the Graded Specialist Psychiatry, Command Hospital (CC), Lucknow was further authenticated by Col D Saldanha, Senior Advisor

(Psychiatry), Military Hospital, Meerut on 23.10.2003 who while endorsing the views expressed by Maj Gambhir (supra) gave the following summarised opinion on the applicant:-

'Case seen and documents perused.

This 19 years old recruit had a manic episode during first few weeks of trg and was admitted to this Hospital on 29.8.03. He has been diagnosed as a case of Mania and managed with antimanic drug (lithium) and antipsychotic drugs in low doses. He has shown good improvement. The patient has residual symptoms at present. However keeping in view of the psychiatric nature of the illness, individual being a recruit and yet to be inducted in Armed Forces as a soldier, he is unlikely to withstand the rigors of stress of service without having relapses, hence I consider him unsuitable for Armed Forces. I agree with the opinion and recommendation of Maj J Gambhir Graded Specialist Psychiatry CH (CC) Lucknow dated 22 Oct 2003.'

10. We have given our anxious consideration on submissions made by both the parties and are of the considered opinion that the applicant was suffering from 'MANIC EPISODE (ICD F 30)' prior to joining the service. The disease was detected within a short span of time of his enrolment i.e. 12 days after enrolment and thus it may be inferred as a constitutional disease and cannot be considered as attributable to or aggravated by military service. Since it was a psychotic disease hence the same could not be detected during medical examination at the time of enrolment.

12. Apart from, in identical 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. 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.

11. 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 SVS Rathore)
Member (J)

Dated : October, 2018

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