

RESERVED
Court No. 1

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

Transferred Application No 1187 of 2010

Friday, this the 26th day of October 2018

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

Din Bandhu Ram S/O Mukhdev Ram, Village-Dal Chhapra,
Post-Dal Chhapra, District-Ballia.

..... Petitioner

Ld. Counsel for the: **Shri S.K. Mishra**, Advocate
Petitioner

Versus

1. Union of India through Defence Secretary, Delhi.
2. P.C.D.A. (Pension), Allahabad.
3. Commanding Officer training Center Record Officer,
Maratha Light Infantry, Belgaum-9.

..... Respondents

Ld. Counsel for the :**Shri Rajiv Pandey**,
Respondents Central Govt Counsel.

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

1. Being discharged during course of basic military training, the petitioner preferred Civil Misc Writ Petition bearing No. 49882 of 2003 in the Hon’ble 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. 1187 of 2010. The petitioner has sought the following reliefs:-

(i) to issue a writ order or direction in nature of certiorari to quash the impugned order dated 17.1.81 passed by P.C.D.A. (Pension) (Respondent No. 2), through his letter No G3/80/8846/VI which is not served to the petitioner till the date of filing and the order dated 3.3.1993 passed by Record Officer The Maratha Light Infantry, Belgaum-9.

(ii) to issue a writ order or direction in nature of mandamus directing the respondents to take any decision for petitioner’s rehabilitation/disability pension/financial assistance.

(iii) to issue a writ order or direction which this Hon’ble Court may deem fit and proper under the facts and circumstances of the case.

(iv) to award the cost of the writ petition to the petitioner.

2. Brief facts of the case are that the petitioner was enrolled in the Indian Army on 02.05.1979. While undergoing basic recruit training at the Maratha Light Infantry (MLI) Regimental Centre, Belgaum the petitioner started showing signs of very odd behaviour viz. unkempt, uncooperative, emotionally in-congruous, not in touch with reality and lacking insight. He was admitted to Military Hospital, Belgaum on 04.11.1979 and transferred to Command Hospital (Air Force),

Bangalore on 07.11.1979 where his ailment was diagnosed as "**Schizophrenia**". He was, thereafter invalided out of service w.e.f. 19.03.1980 under Rule 13 (3) (iv) of Army Rules, 1954 in medical category 'EEE' for disability 'Schizophrenia'. Disability pension claim preferred by the petitioner was rejected by PCDA (P), Allahabad vide order dated 17.01.1981 on the ground of disability being constitutional and neither attributable to nor aggravated by military service (NANA). The documents filed on record reveal that no appeal was submitted to the appellate authority. After having slept for over 22 years, the petitioner approached the Hon'ble High Court for grant of disability pension in the year 2003.

3. Ld. Counsel for the petitioner pleaded that the petitioner 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 discharged 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 of military service and 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 that though the medical documents of the petitioner

are not available, however, from the records available it appears that the disability from which the petitioner suffered during his training in the Army and on which his claim is based, is not attributable to military service as the invaliding disease was considered as constitutional disorder and not related to military service, therefore the pension sanctioning authority has rightly rejected claim of the petitioner. He submitted that the disease of the petitioner first started within 06 months of his enrolment hence it is constitutional and pressed for 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 petitioner was diagnosed to be suffering from "Schizophrenia" on 07.11.1979. The petitioner was ultimately invalided out of service by Invaliding Medical Board (IMB) on 19.03.1980. The personal file of the applicant does not contain medical documents which are necessary for examination of certain factual position of the disease as well as percentage of the disability. The counter affidavit filed during hearing in Hon'ble High Court also does not contain the medical documents. The respondents have stated during hearing that the medical documents of the petitioner have been destroyed and are not available. Neither the petitioner nor the respondents have placed on record the medical documents i.e. IMB of the

petitioner. Thus in the absence of medical documents no order can be passed by this Tribunal in vacuum.

7. However while perusing records there is clear evidence to indicate that the petitioner's behaviour was abnormal and he was referred for psychiatric evaluation in less than 06 months of his enrolment. The respondents have also taken a stand in the counter affidavit that Psychiatric diseases cannot be detected in a recruitment rally and during medical examination at the time of enrolment.

8. In view of the foregoing it is our considered opinion that we are not in a position to accept that the disease of the petitioner was attributable to military service because of following reasons:-

(i) The IMB proceedings are not available and therefore the opinion of the medical board as to why the disease could not be detected at the time of enrolment cannot be scrutinised to decide attributability.

(ii) The delay of over 22 years in raising the issue in 2003 is the primary reason for destruction and non availability of IMB proceedings.

(iii) There is hard evidence that the petitioner's behaviour was abnormal at a very early stage of enrolment and training and he was referred for Psychiatric evaluation in less than 06 months of joining his training. 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.

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. 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 T.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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