

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

Court No- 1

ORIGINAL APPLICATION No. 582 of 2018

Friday, this the 01st Day of October, 2021

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

Vais Dependra Bahadur Singh (No. 10212985 Ex Sepoy), S/o
Shri Deshpat Singh, R/o House No. 91, J.L. Nehru Road,
Sohbatiabagh, Allahabad (U.P.)

..... 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 -110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ Post Office, New Delhi-110011.
3. Officer–In-Charge Records The Rajput Regiment, Pin 900427, C/o 56 APO.

.....Respondents

Ld. Counsel for the
Respondents.

Shri Rajiv Pandey, Advocate
Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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

(i) The Hon’ble Tribunal may kindly be pleased to set aside the order dated 21/11/2017 (Annexure No.A-1) issued by respondent No.3.

(ii) The Hon’ble Tribunal may kindly be pleased to direct the respondents to organize Re-survey Medical Board to assess the further disability if any.

(iii) 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 giving rise to this application are that the applicant was enrolled in 113 Infantry Battalion (Territorial Army) Rajput on 17.11.1992 and was invalided out from service on 23.12.1997 in Low Medical Category EEE (Permanent) under Rule 13 (3) Item IV of the Army Rules, 1954. At the time of invaliding from service, the Invaliding Medical Board (IMB) held at Command Hospital (Eastern Command), Calcutta assessed his disability ‘CATATONIC SCHIZOPHRENIA’ @50% for two years and opined the disability to be neither attributable to nor aggravated (NANA) by

service. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 21.11.2017. Appeal preferred against rejection of disability claim was also rejected. It is in this perspective that the applicant has preferred the present Original Application.

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 an individual 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 applicant was under stress and strains due to rigors of service conditions which may have led to occurrence of the disability. He further stressed that the Medical Board has also mentioned onset/origin of the disease during service/training, therefore, the disability should be accepted as attributable to military service. The Ld. Counsel for the applicant, on account of aforesaid, pleaded for disability pension to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that since the IMB has opined the disability as NANA,

the applicant is not entitled to disability pension. He further accentuated that 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 out of 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 the disability of the applicant has been assessed at 50% for two years and NANA, therefore, the applicant is not entitled to disability pension. The Ld. Counsel for the respondents further submitted that claim for disability pension has rightly been rejected by the competent authority in view of para 198 of Pension Regulations for the Army, 1961 (Part-I), which categorically states that the minimum period of qualifying service actually rendered and required for grant of invalid pension is ten years, but in the instant case the applicant has put in only 04 years, 02 months and 15 days of service. He pleaded that in the facts and circumstances, as stated above, Original Application deserves to be dismissed.

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

6. The summary and opinion of the Specialist in Psychiatry of Command Hospital (Eastern Command, Calcutta dated 02 Nov 1997 read as under:-

SUMMARY AND OPINION OF LT COL PS MURTHY
CLASSIFIED SPECIALIST IN PSYCHIATRY OF COMMAND
HOSPITAL (EC) CALCUTTA-27 DATED 23.10.1997

"This 25 year old Sep DB Singh with about 5 years of service is a case of SCHIZOPHRENIA. In view of unsatisfactory recovery with residual features coupled with individual's demotivation for service, he is being proposed for invalidment out of service in Cat 'EEE' (Psychological).

He manifested psychotic features for the first time in Apr 1997 with complaints of uneasiness and lack of concentration while on a temp duty. He was observed to be very withdrawn, disinterest in work, loss of interest in pleasurable activities, loss of sleep, less communicative and lacked reality touch. He was puzzled and apprehensive about the ongoing hallucinatory experience. Mental state examinations revealed loss of reality touch, social withdrawal, neglect of self care, reduced psychomotor activity, perplexed & anxious affect. He had displayed inappropriate meaningless silly smile. Had auditory, visual & olfactory hallucinations. Speech was wooly & Vague. No clear cut delusions/ thought blocks/ thought broadcasting seen in him. Cognitive functions were unaffected. Insight was lost and judgment was grossly impaired. Physical, systemic examinations including relevant laboratory investigation results were unremarkable.

There was no past or family history of mental illness. Educated upto XII std. No apparent stress in occupational/domestic spheres of life. He is unmarried with multiple sexual contacts with sex workers. There was history of alcohol abuse in moderations.

With a diagnosis of schizophrenia, he has been treated with neuroleptic drugs, ECTs (B) and other supportive measures. Psychotic features disappeared with therapy. On clinical recovery, he was sent on 8 weeks sick leave with maintenance doses of neuroleptic drugs by end of Jun 97.

Review after sick leave revealed him with significant residual features. He was found with flattened and shallow affective responses, reduced psychomotor activity, social withdrawal, lack of drive in all activities coupled with strong demotivation for further service. Repeat psychometry (dte 06.09.97) showed anxiety, lack of self confidence & poor drive level. Demotivation for service was unaffected psychotherapy.

Though there was no active psychotic features, this soldier who had left with significant residual features is considered unsuitable for further service in Cat EEE (Psychological). Advised to continue maintenance doses of neuroleptic drugs under supervision of psychiatrist Advised not to abuse alcohol.

Sd....

Lt Col PS Murthy,

*Classified Specialist in
Psychiatry.*

7. It is well known that mental disorders can escape detection at the time of enrolment, hence benefit of doubt cannot be given to the applicant merely on the ground that the disease could not be detected at the time of enrolment. Since there is no causal connection between the disease and military service, we are in agreement with the opinion of the IMB that the disease is NANA.

8. Apart from, in similar factual background a Regional Bench of Armed Forces Tribunal had dismissed the claim for disability pension in T.A. No. 1462/2010 vide order dated 23.05.2011, wherein the applicant was enrolled on 21.01.2000 and was discharged on 27.04.2000, 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. The said order has been upheld by the Hon'ble Apex Court in Civil Appeal arising out of Dy. No. 30684/2017, Bhartendu Kumar

Dwivedi Versus Union of India and Others, decided on November 20, 2017, by dismissing Civil Appeal on delay as well as on merits.

9. Additionally, in Civil Appeal No 7672 of 2019 in ***Ex Cfn Narsingh Yadav vs Union of India & Ors***, decided on 03.10.2019, 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 three years of 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 as given in para 20 is as 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 which may warrant the constitution of the Review 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.”

10. In the instant case, Medical Board concluded that the disability is neither attributed to army service nor aggravated by military service though it assessed the disability at 50% for two years. Such opinion of the Medical Board was the basis of the discharge of the applicant.

11. The Guide to Medical Officers (Military Pensions), 2002 — “Entitlement: General Principles” has mentioned following diseases in para 27 of the judgment, which ordinarily escape detection at the time of enrolment:

- “(a) Certain congenital abnormalities which are latent and only discoverable on full investigations e.g. Congenital Defect of Spine, Spina bifida, Sacralisation,*
- (b) Certain familial and hereditary diseases e.g. Haemophilia, Congenital Syphilis, Haemoglobinopathy.*
- (c) Certain diseases of the heart and blood vessels e.g. Coronary Atherosclerosis, Rheumatic Fever.*
- (d) Diseases which may be undetectable by physical examination on enrolment, unless adequate history is given at the time by the member e.g. Gastric and Duodenal Ulcers, Epilepsy, Mental Disorders, HIV Infections.*
- (e) Relapsing forms of mental disorders which have intervals of normality.*
- (f) Diseases which have periodic attacks e.g. Bronchial Asthma, Epilepsy, Csom, etc.”*

(Emphasis Supplied)

12. We have also extracted the relevant provisions from the 1982 Rules, which read as under:-

“5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:

Prior to and during service

(a) A member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service.

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9. Onus of proof.—*The claimant shall not be called upon to prove the conditions of entitlements. He/She will receive the benefit of any reasonable doubt. This benefit will be given more liberally to the claimants in field/afloat service cases.*

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14. Diseases.—*In respect of diseases, the following rules will be observed—*

(a) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but influenced the subsequent courses of the disease will fall for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or

contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service.”

13. The Rule 14, as reproduced above, was amended vide Government of India, Ministry of Defence letter No. 1(1)/81/D(Pen-C) dated 20th June, 1996. The amended Clauses read as follows:

"Rule 14 (a)- For acceptance of a disease as attributable to military service, the following two conditions must be satisfied simultaneously:

(i) That the disease has arisen during the period of military service, and

(ii) That the disease has been caused by the conditions of employment in military service.

(b) If medical authority holds, for reasons to be stated, that the disease although present at the time of enrolment could not have been detected on medical examination prior to acceptance for service, the disease, will not be deemed to have arisen during service. In case where it is established that the military service did not contribute to the onset or adversely affect the course disease, entitlement for casualty pensionary award will not be conceded even if the disease has arisen during service.

(c) Cases in which it is established that conditions of military service did not determine or contribute to the onset of the disease but, influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

(d) In case of congenital, hereditary, degenerative and constitutional diseases which are detected after the individual has joined service, entitlement to disability pension shall not be conceded unless it is clearly established that the course of such disease was adversely affected due to factors related to conditions of military services."

14. In **Rajbir Singh**, the Hon'ble Apex Court held that the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service. The Court held as under:

“9. As regards diseases Rule 14 of the Entitlement Rules stipulates that in the case of a disease which has led to an individual's discharge or death, the disease shall be deemed to have arisen in service, if no note of it was made at the time of individual's acceptance for military service, subject to the 8 condition that if medical opinion holds for reasons to be stated that the “disease could not have been detected on medical examination prior to acceptance for service, the same will not be deemed to have so arisen”.

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14. The legal position as stated in Dharamvir Singh case [Dharamvir Singh v. Union of India, (2013) 7 SCC 316 : (2013) 2 SCC (L&S) 706] is, in our opinion, in tune with the Pension Regulations, the Entitlement Rules and the Guidelines issued to the Medical Officers. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from

service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service.

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16. Applying the above parameters to the cases at hand, we are of the view that each one of the respondents having been discharged from service on account of medical disease/disability, the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. There is admittedly neither any note in the service records of the respondents at the time of their entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the member concerned was found to be suffering from could not have been detected at the time of his entry into service. The initial presumption that the respondents were all physically fit and free from any disease and in sound physical and mental condition at the time of their entry into service thus remains unrebutted. Since the disability has in each case been assessed at more than 20%, their claim to disability pension could not have been repudiated by the appellants.”

15. Hon'ble Apex Court in ***Veer Pal Singh Vs Secretary, Min of Def***, rejected the opinion of invaliding Medical Board but directed the respondents to refer the case to Review Medical Board to reassess the medical condition of the applicant and to find out whether at the time of discharge from service, he was suffering from disease which made him unfit to continue in

service. In the aforesaid case, the Court referred the matter to the Review Medical Board in view of the fact that Psychiatrist has noted that the applicant has improved with treatment. The Court referred to Merriam Webster Dictionary; Report of National Institute of Mental Health, USA; Modi's Medical Jurisprudence and Toxicology; and the book titled 'The Theory and Practice of Psychiatry' authored by F.C. Redlich and Daniel X. Freedman, to hold that the observations made by Psychiatrist was substantially incompatible with the existing literature on the subject.

16. However, in the present case, we find that there is no such infirmity in the report of the Medical Board which may warrant reconsideration of the physical condition and the extent of disability by the Review Medical Board.

17. We find that it is not mechanical application of the principle that any disorder not mentioned at the time of enrolment is presumed to be attributed to or aggravated by military service. The question is as to whether the person was posted in harsh and adverse conditions which led to mental imbalance.

18. Annexure I to Chapter IV of the ***Guide to Medical Officers (Military Pensions), 2002 — “Entitlement: General Principles”*** points out that certain diseases which may be undetectable by physical examination on enrolment including the Mental Disorders; Epilepsy and Relapsing forms of mental disorders which have intervals of normality, unless adequate history is given at the time by the member. ***The Entitlement Rules*** itself provide that certain diseases ordinarily escape detection including Epilepsy and Mental Disorder, therefore, we are unable to agree that mere fact that Catatonic Schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease was aggravated or attributable to military service.

19. The 1982 Rules classify the diseases which are affected by climatic conditions, stress and strain and dietary complications. The stress and strain cause the following injuries as per the said classification of diseases:

- “(a) Psychosis and psychoneurosis.*
- (b) Bronchial Asthma.*
- (c) Myocardial infarction, and other forms of IHD.*
- (d) Peptic ulcer.”*

20. Therefore, each case has to be examined whether the duties assigned to the individual may have led to stress and

strain leading to Psychosis and psychoneurosis. Relapsing forms of mental disorders which have intervals of normality and Epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member.

21. The applicant was a young boy of 20 years at the time of enrolment and had been boarded within 5 years of his service. Even if he was suffering from any mental disorder prior to enrolment, the same could not be detected at the time of enrolment. Due to disease applicant was found unsuitable for further service. Neither the nature of job nor the place of posting was such which could have caused stress and strain leading to disability as attributed to or aggravated by military service.

22. 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 Schizophrenia is presumed to be attributed to or aggravated by military service.

23. 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 which may warrant the constitution of the Review Medical Board. The invaliding Medical Board has categorically held that the applicant 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.

24. In view of the above, we do not find any merit in the present Original Application, accordingly, the same is dismissed.

25. No order as to costs.

26. Pending applications, if any, are disposed of accordingly.

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

Dated : 01 October, 2021

Ukt/-