

RESERVED
COURT NO 1

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

ORIGINAL APPLICATION No. 618 OF 2017

Monday, this the 30th day of September, 2019

"Hon'ble Mr. Justice Virendra Singh, Chairperson
Hon'ble Air Marshal BBP Sinha, Member (A)"

Dhananjay Singh (No. 15765563M Ex Rect), S/O Sri Parashuram Singh, R/O Village & Post-Sabalpur, District-Ghazipur (U.P.), PIN-232340.

.....Applicant

Ld. Counsel for: **Shri Shiv Dayal Singh**, Advocate
the Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, Delhi-110011.
2. Incharge, Records Vayu Raksha Topkhana Abhilekh, Air Defence, Artillery Records, Nasik Road Camp-422102.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Namit Sharma**,
Respondents. Central Govt Counsel.

ORDER

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

1. Being aggrieved by denial of disability pension, the applicant has filed the present Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 wherein he has sought the following reliefs:-

- (a) *This Hon’ble Court may graciously be pleased to direct the respondents to give disability pension along with its arrears and interest to the applicant w.e.f. 14.3.1988 towards his disability, ‘EEE’ (Permanent) (Invalided out for being medically unfit under Army Rules 13 (3) III (ii) towards his disability Catatonic Schizophrenia (40%) for two years).*
- (b) *This Hon’ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.*
- (c) *Award costs to the applicant.*

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 18 years, 10 months and 03 days. Since payment of disability pension involves recurring cause of action, the delay was condoned vide order dated 07.12.2017.

3. Brief facts of the case are that the applicant was enrolled in the Air Defence Artillery of the Indian Army on 25.04.1997 and was invalided out of service w.e.f. 15.03.1998 in low medical category ‘EEE (S)’ due to ‘Catatonic Schizophrenia’. The Invaliding Medical Board (IMB) has assessed his disability @ 40% for two years neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide order dated 11.01.2000. Appeal

preferred against rejection of disability pension claim was also rejected vide order dated 16.07.2001. It is in this perspective that this O.A. has been filed.

4. 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 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 the applicant was under stress of service conditions which may have led to occurrence of the disability. The Ld. Counsel for the applicant pleaded for disability pension to be granted to the applicant.

5. On the other hand, Ld. Counsel for the respondents submitted that the applicant, while undergoing basic military training, developed sudden pain in his left leg and he was admitted to Military Hospital (MH), Devlali from where he was granted 04 weeks' sick leave for the period 17.09.1997 to 14.10.1997. On completion of sick leave he reported back to MH, Devlali and downgraded to low medical category CEE (temporary) for diagnosis 'Stress Fracture (Lt) Tibia' by the medical board. The re-categorization medical board again downgraded his medical category CEE (temporary) for three

months which was falling due on 25.01.1998. Meanwhile the applicant was again admitted to MH, Devlali on 20.11.1997 for psychiatric ailment on account of his abnormal behaviour. He was treated by Graded Specialist (Medicine) and was further transferred to INHS, Aswini on 22.11.1997. On admission his treatment continued for over 03 months under the supervision of Classified Specialist (Psychiatry) and Graded Specialist (Psychiatry) who opined the applicant to be suffering from 'Catatonic Schizophrenia'. On recommendation of psychiatric specialist, he was boarded out from service in medical category EEE (S) i.e. permanently unfit for military service. The medical board had recommended the applicant's percentage of disability @ 40% for two years neither attributable to nor aggravated by military service. Ld. Counsel for the respondents further contended that since the medical board had recommended the disability to be NANA, the pension sanctioning authority i.e. CDA (P), Allahabad had rejected disability pension claim on the grounds of disability being NANA. He pleaded the O.A. to be dismissed.

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

7. On careful perusal of the medical documents, it has been observed that the applicant was enrolled on 25.04.1997 and during basic military training he was granted four weeks' sick leave for 'Stress Fracture (Lt) Tibia' and on rejoining from sick

leave he was admitted in the hospital for re-categorization medical board which was due on 25.01.1998 but on 20.11.1997 he was again admitted in MH, Devlali on account of his abnormal behaviour where he was found to be suffering from 'Catatonic Schizophrenia'. While admission in the hospital, Surgical Commander VSSR Ryali, Classified Specialist in Psychiatry had given the following remarks:-

"Reason for referral and presenting complaints: Referred for psychiatric evaluation from a peripheral hospital for abnormal behaviour. During psychiatric interview recruit complained of vague anxiety, a strange feeling within and alleged that he has been assaulted by a superior.

AFMSF-10 dated 18 Nov 97 states "The individual remains absent minded, worried, shows lack of understanding or response to instructions. Docile obedient.

Past, family and personal history: As per AFMSF-10 soldier is in med. Cat CEE (A) Ty from 25 Oct 97 to 25 Jan 98 for fracture (L) Tibia. Med documents pertaining to fracture not received. Hails from UP. Fourth among 6-sibs. Denies family history of mental illness, alcoholism or suicide. Recruit has finished 20-weeks training. He is unmarried. Non-smoker. Occasional drinker. Not exposed to drugs.

Clinical condition on admission: x x x x x Psychologically recruit was unkempt. Neglecting personal care and food, behaved oddly, gestured with hands picked up imaginary things from the bed, talked to himself, spoken irrelevantly and incoherently and rapport could not be established. He displayed echolalia and echopraxia, appeared perplexed and smiled incongruously, though processes were vague and he displayed primary persecutory delusions with impaired insight. x x x x x

Treatment, Progress and disposal: He was treated as Catatonic Schizophrenia with Eskazine (25 mg/day) and ECT (8) with which he gradually recovered. He is currently asymptomatic. He is kempt, co-operative, euthenic, rational, displays no delusions and has regained insight. Having suffered a psychotic episode while under training he becomes unfit for retention.

Recommended: 1. To be invalided out of service in Med. Cat EEE (Psychological).

2. Rehabilitation and follow up will be advised at the time of discharge.

Diag: Catatonic Schizophrenia."

Since the applicant, being a recruit, was recommended to be in Category EEE (S), an IMB was carried out and he was discharged from service in medical category EEE (S) with 40% disablement for two years. He was advised rehabilitation after discharge from service.

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 the applicant's disability 'Catatonic Schizophrenia' is not connected to military service as opined by the IMB. Further, the appellate Committee on First Appeals (ACFA) had also examined the 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 Co-ordinate Bench of this Tribunal dismissed T.A. No. 1462/2010 ***Bhartendu Kumar Dwivedi vs. Union of India and others*** vide order dated 23.05.2011 wherein the applicant was enrolled on 21.01.2000 and was discharged on 23.05.2000 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 Hon'ble Apex Court as Civil Appeal Dy. No. 30684/2017 preferred against the aforesaid order was dismissed on delay as well as on merits.

10. 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 Virendra Singh)
Chairperson

Dated: September, 2019
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