

RESERVED
COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 545 of 2018

Monday, this the 30th day of September, 2019

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

Ex-Recruit/Nursing Assistant Raj Kumar
(Army No.15422149F) of No.1 Military Training Battalion,
Army Medical Corps, Centre and School, Lucknow,
Son of Shri Fulena Singh,
R/o Village Kapasia,
Post Office- BRTS, Tehsil Begusarai,
District Begusarai (Bihar) 851117.

.....Applicant

Ld. Counsel for :
the Applicant

Col B.P.Singh (Retd),
Advocate

Versus

1. Union of India through the Secretary,
Ministry of Defence, South Block,
New Delhi 110011.
2. Chief of Army Staff, Integrated Headquarter of Ministry of Defence
(Army), South Block, New Delhi 110011.
3. Officer-in-Charge,
Army Medical Corps Record, Lucknow.
4. Commanding Officer, No.1 Military Training Battalion,
Army Medical Corp, Centre and School, Lucknow.
5. Principal Controller Defence Accounts (Pension),
Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the :
Respondents

Ms Deepti P Bajpai,
Ld. Counsel for the Respondents.

ORDER

“Per Hon’ble Mr. Justice Virender Singh, Chairperson”

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:-

“(a) Issue/pass an order or direction to the respondents to quash/set aside the orders dated 06.08.2006, 06.12.2016 and 06.02.2017 (Annexure No. A-1, A-2, A-3 respectively being denied illegal, arbitrarily and without application of mind by the respondents.

(b) Issue/pass an order/direction to the respondents of appropriate nature to give the disability of 20% as recommended by the Medical Board Proceedings and also to grant the benefit of “rounding off” of the disability pension benefits to the applicant by granting 50% disability pension with effect from 03.08.2006 as a matter of right as provided vide Government of India, Ministry of Defence letter No.1(2)/97/D (Pen-C) dated 31.01.2001 (Annexure No.A-13) supported by the position held by the Supreme Court.

(c) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with costs.”

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 more than 10 years. Since payment of pension involves recurring cause of action, as such, the delay was condoned.

3. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Army Medical Corps on 11th January 2005 and was invalided out of service w.e.f. 03rd August 2005 after rendering 06 months and 23 days of service under Rule 13(3) item IV of

Army Rule, 1954 on account of “**SCHIZOPHRENIA**”. His Invaliding Medical Board (IMB) was held at Command Hospital (Central Command), Lucknow on 04th July 2005. The duly constituted Invaliding Medical Board had viewed his disability “**SCHIZOPHRENIA**” as Neither Attributable to Nor Aggravated (NANA) by military service and not connected with military service due to disease manifesting within a short period after enrolment and assessed the disability @ 20% for five years. Accordingly, the disability pension claim of the applicant was rejected by the PCDA (P), Allahabad. The applicant preferred first appeal after a gap of ten years and the Army Medical Corps Record Office had rejected the appeal vide letter dated 06th December 2016. Second appeal preferred against the rejection of first appeal was also rejected vide letter dated 06th February 2017.

4. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and has been invalided out of service in Low Medical Category, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted disability pension. He further submitted that IMB has assessed the disability @ 20% for five years and his claim has been unfortunately rejected by PCDA (P), Allahabad.

5. The respondents have relied upon the opinion of Invaliding Medical Board, wherein the applicant’s disease “**SCHIZOPHRENIA**” has been opined by the board as Neither Attributable to Nor Aggravated by military service due to it being not related to service and manifesting within one month and twenty days of enrolment. The learned counsel for the

respondents claimed that the claim of disability pension of the applicant has rightly been rejected and prayed for dismissal of the O.A.

6. We have heard the parties and perused the IMB. The question before us is straight and simple i.e. is the disease of the applicant attributable to or aggravated by Military service.

7. On careful scrutiny of the RMB records, we have noticed that the applicant was enrolled as recruit on 11.01.2005. Within 1 month and 20 days of recruitment i.e. on 02.03.2005, he was referred for Psychiatric evaluation for abnormal behaviour in terms of keeping aloof, talking in an irrelevant manner, being suspicious and having very poor response to training. After admission the applicant complained of feeling of something uncanny happening around him and being used by some unknown people.

8. In the above circumstances, he was recommended to be invalided out of service by relevant medical specialists and was invalided out of service within about 06 months of enrolment.

9. Thus considering all issues and the fact that this disease has manifested within a short span of 01 month and 20 days of enrolment, we agree with the opinion of the medical board that the disease is not connected with service and is NANA. Additionally a recruit is akin to a probationer and therefore the respondents have every right as an employer to remove a recruit from training and from service if he is not fully fit to undergo military training and become a good soldier.

10. Apart from it, in identical factual background Co-ordinate Bench of this Tribunal dismissed **T.A. No. 1462/2010, Bhartendu Kumar Dwivedi** 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 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**.

(Air Marshal BBP Sinha)
Member (A)

(Justice Virender Singh)
Chairperson

Dated: September, 2019
PKG/SB