

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Virtual Hearing)

OA 1540/2017

Plt Officer T H Sarma (Retd)
Versus
Union of India & Ors.

... Applicant
... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate

For Respondents : Mr Anil Gautam, Advocate

CORAM :

HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. BOBBY CHERIAN MATHEWS, MEMBER (A)

ORDER

1. The Applicant has filed this OA to set aside the order of the Respondents rejecting the First Appeal for grant of Disability Pension dated 12.6.2017 and direct the Respondents to grant Invalid Pension w.e.f. 8.11.1982 alongwith benefits of Broadbanding of Disability from 20% to 50%.

2. Brief facts of the case are that the Applicant was commissioned in the Indian Air Force on 8.7.1980 and invalided from service on 7.11.1982 due to ID Schizophrenia. The Invaliding Medical Board held on 28.7.1982 assessed the disability of the Applicant @ 20%, declaring that the disability was neither attributable to nor aggravated by Military Service. The Applicant made representation for grant of Disability Pension but the

same was rejected by the Respondents vide letter dated 9.11.2015. The Applicant made an Appeal to the Chairman, ACFA, New Delhi against the rejection of his claim for Disability Pension.

2. The Learned Counsel for the Respondents did not deny the fact that the Applicant was commissioned in the Air Force on 07.7.1980¹⁴ and was invalided out on 7.11.1982 due to Invaliding Disease "Schizophrenia". The Learned Counsel submits that the Respondents rightly rejected the Applicant's claim quoting the provisions of Regulation 37 of Pension Regulations for the Air Force 1961 (Part-I). The Respondents submit that the Applicant was intimated of the rejection of his claim for grant of Disability Pension vide HQ Letter NoAir HQ/2270/183/PP&R-3/6190/Pen-C dated 6.9.1983. The Applicant had, after a lapse of 35 years, filed OA 416/2017 in AFT, Principal Bench, New Delhi, for grant of Disability Element of Pension and the Tribunal, vide its order dated 16.3.2017 ordered to treat his OA as the First Appeal. The Applicant had submitted the Appeal to the Appellate Committee for First Appeal (ACFA) which observed that as per the Specialist Opinion of the Invaliding Medical Board, the onset of the ID was in October 1981 at Jalahalli, a peace area and placed in Low Medical Category as a case of "Transient Situational Disturbance". The Respondents submit that the response of the Applicant to the treatment was poor and due to propensity for relapse, he was invalided out. The Respondents submit that the ID is a Psychiatric Disorder and may be due to complex interaction of multiple genetic vulnerabilities occupied with environmental, biological and psychological

stressors during early childhood development or structural and neuro chemical damage to the brain in infancy manifesting in adult life as a psychiatric ailment. The Respondents had relied on Para 54 of Chapter VI Guide to Medical Officers (Military Pensions) 2002, Amended 2008, being a case of neither attributable to nor aggravated by military service. Therefore, the Learned Counsel prayed for dismissal of the OA.

3. We have scrutinised the documents placed on record and heard the arguments put forth by both sides.

4. The following facts are germane to resolution of this case:

(a) The Applicant was commissioned in the IAF on 7.7.1980 and invalided out of service on 7.11.1982 on account of ID, Schizophrenia.

(b) The onset of the ID first came to light in October 1981 which is within one year and 4 months of commencement of service.

(c) The Applicant maintained a stoic silence and has approached the Tribunal for relief after an hiatus of 35 years.

5. Guidelines for assessment of Psychiatric Disorder have been spelt out in the Guide to Medical Officers (Military Pension) 2002 which elaborates in detail the factors which impinge on Attributability and Aggravation of Psychiatric Disorders in Para 54 which are reproduced below:

54. Mental & Behavioural (Psychiatric) Disorders

Psychiatric illness results from a complex interplay of endogenous (genetic/biological) and exogenous (environmental, psychosocial as well as physical) factors. This is true for the entire spectrum of psychiatric disorders (Psychosis & Neurosis) including substance abuse disorders. The relative contribution of each, of course, varies from one diagnostic category to another and from case to case.

The concept of attributability or aggravation due to the stress and strain of military service can be, therefore, evaluated independent of the diagnosis and will be determined by the specific circumstances of each case.

(a) Attributability will be conceded where the psychiatric disorder occurs when the individual is serving in or involved in :-

- (i) Combat area including counterinsurgency operational area*
- (ii) HAA Service*
- (iii) Deployment at extremely isolated posts*
- (iv) Diving or submarine accidents, lost at sea*
- (v) Service on sea*

- (vi) *MT accidents involving loss of life or Flying accidents (both as flier and passenger) in a service aircraft or aircraft accident involving loss of life in the station*
- (vii) *Catastrophic disasters particularly while aiding civil authorities like earthquake, cyclone, tsunami, fires, volcanic eruptions (where one has to handle work in proximity of dead or decomposing bodies)*
- (b) *Attributability will also be conceded when the psychiatric disorder arises within one year of serious/multiple injuries (e.g. amputation of upper/lower limb, paraplegia, quadriplegia, severe head injury resulting in hemiplegia or gross neuro cognitive deficit which are themselves considered attributable to military service. This includes Post Traumatic Stress Disorder (PTSD).*
- (c) *Aggravation will be considered in Psychiatric disorders arising within 3 months of denial of leave due to exigencies of service in the face of:*
 - (i) *Death of parent when the individual is the only child/son*
 - (ii) *Death of spouse or children*
 - (iii) *Heinous crimes (e.g. murder, rape or dacoity) against members of the immediate family*

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- (iv) *Reprisals or the threat of reprisals against members of the immediate family by militants/terrorists owing to the fact of the individual being a member of the Armed Forces*
 - (v) *Natural disasters such as cyclones/earthquakes involving the safety of the immediate family*
 - (vi) *Marriage of children or sister when the individual is the only brother thereof and specially if their father is deceased.*
- (d) *Aggravation will also be conceded when after being diagnosed as a patient of psychiatric disorder with specific restrictions of employability the individual serves in such service environment which worsened his diseases because of the stress and strain involved like service in combat area including counterinsurgency operations, HAA, service on board ships, flying duties*
- (e) *Attributability may be granted to any psychiatric disorder occurring in recruits and results in invalidment from service only when clearly identifiable severe stressors including sexual abuse or physical abuse are present as causative factor/factors for the illness.*

6. On scrutiny of the records, it is observed that the extremely limited period of service of the Applicant (nearly 28 months) has an important

bearing with regard to the possible onset of the disease and its subsequent aggravation and its linkage to military service. The onset of the ID was first observed within 16 months of commencement of service. In the limited period of service, no abnormal service condition or any other contributory factor which could have a bearing on the medical condition of the Applicant has been brought to the fore.

7. Before coming to a considered opinion, it would be pertinent to refer to the judgment of the Hon'ble Apex Court in Civil Appeal No 7672 of 2019 (Diary No 27850 of 2017), decided on 03/10/2019, in the case of Ex Cfn Narsingh Yadav Vs UOI & Others, wherein the Apex Court had upheld the decision of AFT, Regional Bench, Luknow in OA No.235 of 2010 dated 23.09.2011 denying Disability Pension to a soldier medically boarded out with Schizophrenia having less than four years service. The Supreme Court was pleased to view -

"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 Schizophrenia 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.

22. Thus, we do not find any merit in the present appeal, accordingly, the same is dismissed".

8. On the question of primacy of the Medical Boards on a case of similar nature, the Hon'ble Supreme Court in the case of UOI Vs Ravinder Kumar in Civil Appeal No.1837/2009 decided on 23.05.2012, as under :-

"5. We are of the view that the opinion of the Medical Board which is an expert body must be given due weight, value and credence. Person claiming disability pension must establish that the injury suffered by him bears a causal connection with military service".

We find no infirmity in the proceedings of the Medical Board nor any cogent reason to interfere in its findings.


9. The Application is also impacted by the inexplicable delay of 9251 days for which no cogent reasons have been brought to the fore. In the light of the principles laid down by Hon'ble Apex Court in the case of C. Jacob Vs. Director of Geology and Mining & Anr., reported in (2008) 10 SCC 115, the stale claim cannot be revived for grant of Pensionary benefits.

10. In view of the above, we are of the considered view that the claim of the Applicant is bereft of strength on all counts and merits dismissal.

11. The OA is disposed off accordingly.

12. No order as to costs.

Pronounced in the open court on this 18th day of October 2022.


(JUSTICE SUNITA GUPTA)

MEMBER (J)


(LT GEN BOBBY CHERIAN MATHEWS)

MEMBER (A)

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