ARMED FORCES TRIBUNAL CHANDIGARH BENCH AT CHANDIMANDIR

O.A. No.06 of 2010

Ex. Rect. Amit Kumar Vs U.O.I & ors.

ORDER

Present: For the applicant: Mr.R.K. Mankotia, Advocate

For the respondents: Mr.Mohit Garg, CGC. for Respondent Nos. 1 to 4 & 6

Brig. P.S.Ghuman, Adv. for Respondent No.5.

JUSTICE GHANSHYAM PRASAD

In the course of submissions, learned counsel for the applicant submits that he does not claim anything against respondent No.5 at this stage. Therefore the name of respondent No.5 be deleted from the array of the case.

Prayer is allowed. The name of respondent No.5 is ordered to be deleted from the array of the parties.

Heard learned counsel for both the parties.

Written statement has already been filed on behalf of respondent Nos.1 to 4 & 6.

The applicant was recruited on 20-02-21008 in military service. After his due medical examination, the Doctor found the applicant 100% medically fit. Thereafter he underwent on military

training. While the applicant was undergoing military training in the month of November, 2008, he felt some problem in his head due to minor internal injury and fell down on the ground unsconsiously. He was taken to the Hospital for treatment. Subsequently, the applicant was brought before the Invaliding Medical Board on 28-01-2009. He was found to suffer from **"MANIC EPISODE (F-30)"** and his disability was assessed as 40% for life. Ultimately, the applicant was invalidating out from the military service on 16-02-2009. According to the opinion of the Invaliding Medical Board, the onset of the disease was not attributable to or aggravated as a result of military service. No casual relationship with training was established.

In the course of submissions, learned counsel for the applicant submits that at the time of enrolment of the applicant in the military service no Note to that effect was made by the Medical authority. This fact has also been admitted in the written statement filed by the respondents.

The admitted position is that the disease was detected after 8 months of enrolment of the applicant in the military service. No pathological or other reason has been assigned by the Medical Board as to why the disease be not considered as attributable to or aggravated as a result of military service. Only vague opinion has been given by the Doctor which does not conform to Rule 14(b) and (c) of the Entitlement Rules, 1982. In the absence of no Note on the record at the time of enrolment of the applicant and in the absence of any explanation made in the Invaliding Medical Board opinion, the only presumption would be

that the onset of the disease is deemed to be attributable to or aggravated as a result of the military service.

So far as the percentage of disability is concerned, it is admittedly 40% which is more than that of minimum requirement for grant of disability pension as provided in paragraph 173 of Pension Regulations for the Army, 1961.

On the other hand, learned counsel for the respondents submits that in view of the Medical Board opinion, the applicant is not entitled to get any disability pension. The opinion of the Medical Board must be given primacy.

As discussed above, it is quite apparent that since the Medical Board opinion is not in conformity with the Rules and Regulations framed by the authorities, therefore, no reliance can be placed on the opinion of Medical Board regarding attributability or aggravation.

Thus, for the reasons stated above, we allow this application. The respondents are directed to assess and release the disability pension in favour of the applicant in accordance with law and Regulations from the date of his invalidation from the military service within three months from the date of receipt of this order.

(Justice Ghanshyam Prasad)

(Lt Gen H S Panag (Retd)

26-02-2010
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