

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI**O.A.No.41 of 2014****Monday, the 08th day of December, 2014**

The Honourable Justice V.Periya Karuppiah
(Member-Judicial)

and

The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

Ex-Rect., M.Venkateswarlu
Service No.2612073-H
Son of Mr.M.Rama Brahman, aged about 30 years
House No.9-80, Padmashali Street
Village, Post & Mandal – Kalva Srirampur
Dist-Karimnagar, Andhra Pradesh
PIN: 505 153

...Applicant

By Legal Practitioners:
Mr.M.K.Sikdar and Mr.S.Biju

vs

1. The Union of India
Represented by – The Under Secretary
Ministry of Defence, Sena Bhavan
New Delhi – 110 105
2. The Senior Records Officer
Madras Regiment Abhilekh Karyalaya
Records The Madras Regiment
Pin: 900 458, C/o 56 APO
3. The President Medical Board
Sainik Aspatal Wellington
Military Hospital Wellington
PIN: 900 458, C/o 56 APO
4. The PCDA (P)
G-3 Section, Draupadi Ghat
Allahabad (U.P), PIN: 211 014

...Respondents

Mr.B.Shanthakumar, SPC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

1. The applicant, Ex. Rect. M.Venkateswarlu has filed this Original Application to quash the impugned opinion of the Invaliding Medical Board dated 20 November 2003 and the impugned order passed by the 1st respondent on 06 February 2009 and impugned order passed by the 2nd respondent, dated 31 March 2013 rejecting his claim for disability pension and to pass suitable orders to grant him disability pension rounded off to 50%.

2. Briefly, the applicant submits that he was enrolled in the Army on 12 March 2003 after undergoing vigorous physical tests and medical examination as Sepoy (recruit). He submits that at the time of joining the Army, neither was he suffering from any ailment nor had any history of constitutional disease running in his family and was found fit in every mandatory medical examination till August 2003. He further submits that while on basic military training, he sustained severe head injury in August 2003. The applicant would further claim that he was beaten by the instructor but on medical records, he was shown as having fallen from a height of 10 feet while climbing a rope. Since then he had started suffering from recurring episodes of generalized seizures and was admitted to MH, Wellington and subsequently Air Force Command Hospital, Bangalore. The Medical Specialist opined that the disability 'generalised seizures' being a neuro imaging abnormality and requiring prolonged anti

convulsant therapy, considered him unfit for military service and recommended for invaliding him out of service in medical category S1 H1 A1 P5 E1. The applicant would submit that a Court of Inquiry was ordered and the said report was submitted to the Commanding Officer for his injuries having been beaten by the said instructor and the errant instructor was punished for the same. The applicant would claim that his disability was assessed at 40% for life. However, the Invaliding Medical Board held that the ID was neither attributable to nor aggravated by military service and further the said disease was constitutional in nature and not related to service and consequently he was invalided out of service without any disability pension. The applicant submits that he had represented to the 1st Appellate authority on 28 April 2005. However, his claim for disability was rejected *vide* letter of 3rd January 2007 stating that the disability was neither attributable to nor aggravated by military service. Aggrieved, the applicant preferred a second appeal on 20 March 2007. However, this too was rejected *vide* 1st respondent's letter dated 06 February 2009.

3. In view of the foregoing, the applicant would submit that he had no other option but to come before this Tribunal for justice and praying for the impugned orders dated 06 February 2009 and 31 March 2013 to be quashed and to grant him disability pension of 40% rounded off to 50% for life, with effect from 01 January 2004.

4. The respondents, in their submissions, would submit that the applicant was enrolled in the Army on 12 March 2003 and was invalided out of service with effect from 31 December 2003 under Army Rule 13 (3) (iv) after recruit training of 295 days. They would submit that initially the applicant was admitted to MH Wellington on 28 August 2003 just after completing 4 months of basic training on account of generalized seizures and was transferred to Air Force Command Hospital, Bangalore on 04 September 2003. He was admitted to Neurosurgery ward with history of headache following trivial head injury in August 2003 when he fell from a height of 10 feet while climbing a rope. During evaluation, the applicant gave history of recurrent episodes of transient loss of consciousness. He was transferred back to MH Wellington and was recommended for invalidation from military service. A duly constituted Invaliding Medical Board assessed the disability at 15-19% for life and regarded the said disability 'generalised seizure' as neither attributable to nor aggravated by military service. The applicant's subsequent claims for disability was rejected by the PCDA, Allahabad *vide* their letter dated 18 June 2004. The applicant's first and second appeals were also rejected by the Defence Minister's Appellate Committee on Pensions. The respondents would contend that the ID 'generalised seizure' is difficult to detect during recruiting medical examination. They would further aver that the ID was existent even before the applicant joined the service. Also, the applicant had given history of six episodes of 'generalised seizures' at the time of examination by the Neurologist but no eyewitness account exists. After the onset of the ID, he had spent the rest of his

service in peace station under medical care and hospitalization. Further, the applicant's claim that he fell from a rope is also not substantiated as there is no injury report or a Court of Inquiry to support this contention. The respondents would also contend that the contention of the applicant that he had been beaten by the instructor is a false allegation and there is nothing on record to support this allegation and no Court of Inquiry to that effect exists as alleged by him. They would also submit that the disease 'epilepsy' may develop at any age without obvious discoverable cause and persons who develop epilepsy while serving in forces are commonly the adolescents with or without ascertainable family history of disease. The onset of epilepsy does not exclude constitutional idiopathic type of epilepsy but possibility of organic lesion of the brain associated with cerebral trauma normally occur during service at high altitudes etc., and since the applicant was only a recruit and was not put through any stress and strain, his claim should not be conceded to. Therefore, the opinion of the Invaliding Medical Board and the 1st and the 2nd Appellates should be accepted.

5. The respondents have also supported their contention by quoting the Hon'ble Apex Court's judgment in the case of A.V.Damodaran vs Union of India and others that the opinion of the Medical Board should be given due weight, value and credence, it being an expert body. Since the applicant had served for only 295 days of which only 4 months were in training and the rest under

medical care and as he was also serving in a peace station, his claim deserves to be rejected.

6. In view of the aforesaid, the respondents would pray that the Hon'ble Tribunal dismiss the OA as it lacks merit and substance.

7. On the above pleadings, the following points have been framed for discussion:

(i) Is the ID 'generalised seizure' attributable to and aggravated by military service?

(ii) Whether the opinion of Invaliding Medical Board proceedings as to attributability or aggravation of the ID and the impugned orders dated 06 February 2009 and 31 March 2013 are liable to be quashed?

(iii) What relief, if any, is the applicant entitled to?

8. We have heard the arguments of Mr.M.K.Sikdar and Mr.S.Biju, learned counsel appearing for the applicant and Mr.B.Shanthakumar, learned Senior Panel Counsel, and Maj Suchithra Chellappan, learned JAG Officer (Army) representing the respondents and perused all the documents put forth before us.

9. It is not disputed that the applicant was enrolled in the Army on 12 March 2003 and at the time of enrolment, he was not suffering from any ailments which were noted in the medical documents. He was referred to Military Hospital, Wellington for headaches and he was diagnosed as 'generalised seizures' and found to be unfit for military service and was accordingly invalided out of service with degree of disability at 15-19%. The Invaliding Medical Board

opined that the injury was neither attributable to nor aggravated by military service and hence no disability pension was sanctioned despite his appeals to the 1st and 2nd Appellate authorities.

10. Points (i) and (ii): We note from the medical records that in a statement to the medical specialist, the applicant contends that he fell from a height of 10 feet while climbing a rope and since then he has been having loss of consciousness and transient seizures. The learned counsel for the applicant would also claim that the said injury to the head was caused to the applicant when he was allegedly beaten by his instructor. However, there are no records to substantiate this claim and no records regarding conduct of a Court of Inquiry are available.

11. The applicant's counsel would also argue that the Hon'ble Apex Court's judgments in Civil Appeal No.4949 of 2013 in the case of Dharamvir Singh vs UOI and others and Civil Appeal No. 5605 of 2010 in the case of Sukhvinder Singh vs UOI and others has clearly stated that when "disability is not recorded at the time of recruitment, it must be presumed to have been caused subsequently and unless proved to the contrary to be consequence of military service". The benefit of doubt should therefore go to the applicant and the applicant should be given disability as attributable to and aggravated by military service.

12. Chapter II of the 'Guide to Medical Officers (Military Pensions) 2002' relates to Entitlement and General Principles. Para 7 of the said Chapter talks of

evidentiary value of medical records at the commencement of service. For better understanding, the said paragraph is reproduced below:

“7. Evidentiary value is attached to the record of a member’s condition at the commencement of service, and such record has, therefore, to be accepted unless any different conclusion has been reached due to the inaccuracy of the record in a particular case or otherwise. Accordingly, if the disease leading to member’s invalidation out of service or death while in service, was not noted in a medical report at the commencement of service, the inference would be that the disease arose during the period of member’s military service. It may be that the inaccuracy or incompleteness of service record on entry in service was due to a non-disclosure of the essential facts by the member, e.g., pre-enrolment history of an injury or disease like epilepsy, mental disorder etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrolment. Such lack of recognition may affect the medical categorization of the member on enrolment and / or cause him to perform duties harmful to his condition. Again, there may occasionally be direct evidence of the contraction of a disability, otherwise than by service. In all such cases, though the disease cannot be considered to have been caused by service, the question of aggravation by subsequent service conditions will need examination.

The following are some of the diseases which ordinarily escape detection on enrolment:

(a) to (e) xx xx xx xx xx

(f) *Diseases which have periodic attacks, e.g., Bronchial Asthma, Epilepsy, CSOM etc.”*

From the application of above, we see that at the time of enrolment, no record was made of the applicant having had epilepsy etc. Further, the rules also state that some diseases ordinarily escape detection at the time of enrolment and it includes diseases which have periodic attacks, e.g., Bronchial Asthma, Epilepsy, CSOM etc. We also note from the medical documents of Invaliding Medical Board (IMB), the Classified Specialist (Medicine and Neurology) at Air Force Command Hospital, Bangalore has observed as under:

“Profile:

20 year old recruit. Admitted Neurosurgery ward with history of headache following trivial head injury in Aug 2003 (Fell from a height of 10 feet while climbing a rope). During evaluation, he gave history of recurrent episodes of transient loss of consciousness since the injury. Tonic-

stiffening of the body present. Each episode lasted for 3-4 minutes. Last episode – 25 Aug 2003. Post-ictal lethargy present. No family history of seizures present.”

13. In the opinion of the IMB, on the question whether the disability was in quiescent state at the time of enrolment and hence could not be detected by the medical officer, the Board answered in the negative. It can, therefore, be presumed that the onset of the disease has manifested during training and, therefore, was detected at a later stage. In the instant case, we know that the applicant suffered head injury ostensibly, as recorded by the Medical Specialist, due to a fall from a height of 10 feet while climbing a rope. However, no injury report was initiated nor any Court of Inquiry was conducted to ascertain the circumstances under which the injury had occurred. In the absence of these, we will have to go by the recording of the Medical Specialist that the injury to the head was during training.

14. According to Para 423 (a) of the “General Rules of Guide to Medical Officers (Military Pensions) 2002, it is immaterial whether the cause of disability arose in field service / active service area under normal peace conditions. For better understanding, para 423 (a) is reproduced below:

“For the purpose of determining whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Service / Active Service area under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence, both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his / her favour, which can be dismissed with the sentence “of course, it is possible but not in the least

probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in cases occurring in Field Service / Active Service areas."

15. In classification of diseases prescribed at Chapter IV of Annexure I under paragraph 4, post traumatic mental epilepsy and other diseases resulting in head injuries have been shown as one of the diseases effected by training, marching, prolonged standing etc. It is well known that the training for recruits is both psychologically and physically demanding and strenuous especially as they are not accustomed to long hours of physical activities when they initially join the service.. In the present instance, it has been clearly stated that the applicant has fallen from a rope while on training and injured his head. The Medical Specialist also noted that recurrent episodes of transient loss of consciousness have occurred since the said injury.

16. Classification of diseases have been given at Chapter IV of Annexure of Guidelines to Medical Officers cited above. Under paragraph 4, post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, in the extant case, presumption would be that the disability of the appellant bore a causal connection with service conditions.

17. In view of the findings recorded above, we are inclined to agree with the contention of the applicant that the opinion of the IMB as well as the impugned order dated 06 February 2009 with regard to attributability / aggravation of the injury are liable to be set aside and allow the plea that the said ID, ie.,

'Generalised Seizure' occurred to him is attributable / aggravated due to military service.

18. In a judgment in the case of Sukhvinder Singh vs UOI and others, in the Civil Appeal No.5605 of 2010, the Hon'ble Apex Court held that a combatant soldier is liable to be invalided out of service only if his disability is 20 per cent or above and there is a further finding that he cannot discharge his duties, even after being placed in a lower medical category. Relevant extracts of the above judgment is given below:

"6. We think that it is beyond cavil that a combatant soldier is liable to be invalided out of service only if his disability is 20 per cent or above and there is a further finding that he cannot discharge duties even after being placed in a lower medical category. We are indeed satisfied to note that Rule 173 Appendix-II (10) postulates and permits preferment of claims even "where a disease did not actually lead to the member's discharge from service but arose within ten years thereafter". We, just as every other citizen of India, would be extremely disturbed if the Authorities are perceived as being impervious or unsympathetic towards members of the Armed Forces who have suffered disabilities, without receiving any form of recompense or source of sustenance, since these are inextricably germane to their source of livelihood. Learned Counsel for the respondents has failed to disclose any provision empowering the invaliding out of service of any person whose disability is below 20 per cent. Indeed, this would tantamount to dismissal of a member of the Armed Forces without recourse to a court-martial which would automatically entitle him to reinstatement. Regulation 143 envisages the 'Re-Enrolment of Ex-Servicemen Medically Boarded Out', where the disability is reassessed to be below 20 per cent. It is, therefore, self contradictory to contend that the invaliding out of service of the Appellant was justified despite his disability being of trivial proportions having been adjudged between 6 to 10 per cent only. We shall presume, albeit fortuitously for the Respondents, that re-assessment of the Appellant's disability was not required to be performed because it was found to be permanent. xx xx xx"

19. The above judgment fits squarely in the extant case and, accordingly, the degree of disability in the case of applicant is deemed to be 20% for life. Further, in accordance with para 7.2 of Ministry of Defence letter dated 31 January 2001, the applicant is entitled to broadbanding of disability from 20% to 50%.

20. In sum, the O.A. is allowed. The disability assessed by the applicant is to be treated as attributable to by military service. The degree of his disability is to be broadbanded from 20% to 50% for life. The applicant is entitled to the payment of disability pension and the consequential admissible arrears. However, this relief is restricted to a period of three years prior to the date of filing of this Original Application, i.e., 16 December 2010. This order shall be complied with, within three months from today. In default, an interest of 9% *per annum* is payable from that date. No order as to costs.

Sd/-
Lt Gen K Surendra Nath
Member (Administrative)

Sd/-
Justice V.Periya Karuppiah
Member (Judicial)

08.12.2014
[True copy]

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

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3. The President Medical Board
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Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.No.41 of 2014

Dated: 08.12..2014