

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**O.A.No.258 of 2019**Friday, the 9th day of December, 2022**CORAM:****HON'BLE MR. JUSTICE K. HARILAL, MEMBER(J)****&****HON'BLE AIR MARSHAL S.R.K.NAIR, PVSM, AVSM, VM, M-in-D, MEMBER(A)****Applicant:**

Ex-No.14370747L GNR OPR Muralreedharan V.,
Artillery, Aged 53 years,
S/o Late V.Padmanabhan, Vettukattil House,
Mundamuka, Ganeshagiri P.O., Shoranur-3,
Palakkad Dist, Kerala State- Pin 679 123.

By Adv. Shri Ramesh C.R.

Versus

Respondents:

- 1.The Union of India
Through the Secretary,
Ministry of Defence (ARMY),
South Block, New Delhi - 110011.
- 2.The Chief of Army Staff,
Integrated Hqrs, Ministry of Defence,
South Block, New Delhi - 110011.
- 3.The Principal Controller of Defence Accounts(Pension),
Draupadi Ghat, Allahabad, Uttarpradesh, Pin-211014.
- 4.The Officer-in-Charge (Records),
Records, Artillery, Nasik Road Camp,
Nasik, Maharashtra State-422 102.

By Shri C.B.Sreekumar, Central Government
Senior Panel Counsel.

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A.No.258 of 2019

Ex-No.14370747L GNR OPR
Muralleedharan V.

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Applicant

Versus

Union of India and 3 others

Respondents

For Applicant

:

Adv.Shri Ramesh C.R.

For Respondents

:

Shri C.B.Sreekumar,
Central Government
Senior Panel Counsel.

CORAM:

HON'BLE MR. JUSTICE K.HARILAL, MEMBER (J)

&

HON'BLE AIR MARSHAL S.R.K.NAIR, MEMBER (A)

O R D E R

09.12.2022

Deeply aggrieved by the denial of disability pension, the applicant has preferred this original Application and prayed for a direction to the respondents to grant disability pension with rounding off benefit.

2. The applicant Muraleedharan V. Ex.No.14370747L GNR OPR was a Gunner (OPR) in Artillery, who was enrolled in the Indian Army on 16th Mar 1983 and he was invalided out from service in low medical category EEE on 7.10.1985. At the time of enrolment, he was physically and medically fit for Army service and no note of any disability was made on record at that time by the medical experts. After successful completion of basic training and technical training, he was posted in various places where climatic condition was heavy and extreme. While serving in Rajasthan Border, he was on guard duty and he was punished with front and back rolls. After the said punishment, he could not recollect anything but he could realize vaguely that he was in some hospital. He had undergone medical examination and he was diagnosed with "Schizophrenia" at Western Command Hospital, Chandimandir from 15th Mar 1985 to 14th Oct 1985. On the basis of the recommendation of the Medical Board, he was discharged. He was subjected to medical examination by the Invaliding Medical Board. The Invaliding Medical Board assessed his disability "Schizophrenia" at 20% for two years, but further opined that the invaliding disease "Schizophrenia" was neither attributable to nor

aggravated by military service, vide Annexure A-1. His claim for disability pension was rejected by the PCDA(P) on the reason that the invaliding disease "Schizophrenia" was neither attributable to nor aggravated by military service. Aggrieved by the denial of disability pension by the adjudicating authority, the applicant had preferred first appeal before the first appellate committee and the first appellate committee also rejected the appeal affirming the denial of disability pension made by the adjudicating authority. Though he had preferred writ Petition No.29260 of 2007 before the Hon'ble High Court of Kerala, the same was dismissed on the ground of delay, vide Annexure A-4. Thereafter, the applicant had preferred a belated second appeal against the rejection of his disability pension by the first appellate committee, but the second appellate committee also rejected his claim for disability pension affirming the opinion of the first appellate committee, vide Annexure A-11. In the above circumstances, the applicant was left with no remedy other than approaching this Tribunal invoking the jurisdiction and power under Section 14 of the Armed Forces Tribunal Act, 2007.

3. In the reply statement, the respondents raised various contentions to justify the denial of disability pension. The respondents admitted the tenure of service rendered by the applicant and his invalidation under Item III (iii) of Army Rule 13(3) due to disability "Schizophrenia (295)". But they further contended that the Invaliding Medical Board categorically opined that the disability was neither attributable to nor aggravated by military service and the same was affirmed by the statutory authorities and both the appellate authorities under law. Therefore, there is no scope for any interference with the concurrent findings of the adjudicating as well as appellate authorities invoking the jurisdiction of this Tribunal under Section 14 of the AFT Act, 2007. According to the respondents, the applicant has rendered service in the Army for 2 years and 206 days only and hence, the cause of disease can never be attributable to or aggravated by military service.

4. Heard Shri Ramesh C.R., learned counsel appearing for the applicant and Shri C.B. Sreekumar, learned Central Government Senior Panel Counsel appearing for the respondents.

5. The crux of the arguments advanced by the learned counsel appearing for the applicant is that all the statutory authorities, including the Release Medical Board and the appellate authorities went wrong by evaluating the cause of disability without considering the statutory presumptions under Rules 4, 5, 9 and 14 of the Entitlement Rules for Casualty Pensionary Awards, 1982 and Para 423(a) and (c) of the Regulations for Medical Services, 1983. According to the learned counsel, indisputably, the applicant was physically and medically fit and no note of any disability was made on record by the medical experts at the time of his enrolment. Therefore, the statutory authorities and the appellate authorities ought to have presumed that the disability was caused by his subsequent service in the Army. But, no enquiry has been conducted in view of the statutory presumptions which stood in favour of the applicant under Rule 5 of the Entitlement Rules. No evidence has been adduced by the respondents to prove that the invaliding disease "Schizophrenia" was not caused by conditions of military service. Thus, the respondents miserably failed to rebut the presumption under Rule 9 of the Entitlement Rules.

6. *Per contra*, learned Central Government Senior Panel Counsel appearing for the respondents advanced arguments to justify the denial of disability pension on the reason that the invaliding disease was neither attributable to nor aggravated by military service. According to him, “Schizophrenia” is a disease which could not have been detected at the time of enrolment unless the recruit himself discloses the same at the time of enrolment as it was a disease manifested abruptly. Therefore, the presumption under Rule 5 of the Entitlement Rules cannot be drawn and applied automatically merely on the reason that the applicant was found physically and medically fit at the time of enrolment and no note of any disability was made on record by the medical experts. In order to substantiate the said contention, the respondents cited the decisions of the Supreme Court in *Ex CFN Narsingh Yadav v. Union of India & Others*, Civil Appeal No.7672 of 2019 (Diary No.27850 of 2017) and *Union of India & Ors. v. Ex. Sep. R. Munusamy* (Civil Appeal No.6536 of 2021, decided on July 19, 2022) 2022 Live law (SC) 619.

7. In view of the submissions at the Bar, the point to be considered is whether the respondents are

justified in denying the disability pension to the applicant on the ground that the disability was neither attributable to nor aggravated by military service, when he was found medically and physically fit at the time of enrolment. The admitted facts germane for resolution in this Original Application are as follows:

7.1 The applicant was enrolled in the Army on 16.3.1983 as Gunner(OPR) and invalided out from service on 7.10.1985 after rendering about 2 years and 7 months and the onset of the disease was on 15.3.1985 after 2 years from the date of enrolment. It is true that at the time of enrolment, he was medically and physically fit for enrolment and no note of any disability was made on record by the medical experts who examined him at the time of enrolment.

8. Can a presumption under Rule 5 of the Entitlement Rules be drawn to the effect that the applicant was in sound physical and mental condition upon entering service and the disablement was due to the military service for 2 years and 6 months? We are of the view that this question is no longer *res integra* as it stands answered and covered by the decision of the Supreme Court in **Ex CFN Narsingh Yadav's case**

(*supra*) and Ex. Sep. R. Munusamy's case (*supra*). In Ex CFN Narsingh Yadav's case (*supra*), the Supreme Court held as follows:

"15. We find that it is not mechanical application of the principle that any disorder not mentioned at the time of enrolment is presumed to be attributed to or aggravated by military service. The question is as to whether the person was posted in harsh and adverse conditions which led to mental imbalance.

16. Annexure I to Chapter IV of the Guide to Medical Officers (Military Pension), 2002 – "Entitlement: General Principles" points out that certain diseases which may be undetectable by physical examination on enrolment including the Mental Disorders; Epilepsy and Relapsing forms of mental disorders which have intervals of normality, unless adequate history is given at the time by the member. The Entitlement Rules itself provide that certain diseases ordinarily escape detection including Epilepsy and Mental Disorder, therefore, we are unable to agree that mere fact that Schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease was aggravated or attributable to military service.

17. xxx xxx xxx xxx

18. *Therefore, each case has to be examined whether the duties assigned to the individual may have led to stress and strain leading to Psychosis and Psychoneurosis. Relapsing forms of mental disorders which have intervals of normality and Epilepsy are undetectable diseases while carrying out physical examination on enrolment, unless adequate history is given at the time by the member.*

19. xxx xxx xxx xxx

20.
 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”.

Further, in Ex. Sep. R. Munusamy's case (*supra*), it was held by the Supreme Court as under:

“What exactly is the reason for a disability or ailment may not be possible for anyone to establish. Many ailments may not be detectable at the time of medical check-up, particularly where symptoms occur at intervals. Reliance would necessarily have to be placed on expert medical opinion based on an in depth study of the cause and nature of an ailment/disability including the symptoms thereof, the conditions of service to which the soldier was exposed and the connection between the cause/aggravation of the ailment/disability and the conditions and/or requirements of service. The Tribunal patently erred in law in proceeding on the basis of a misconceived notion that any ailment or disability of a soldier, not noted at the time of recruitment but detected or diagnosed at the time of his discharge or earlier, would entitle the soldier to disability pension on the presumption that

the disability was attributable to military service, whether or not the disability led to his discharge, and the onus was on the employer to prove otherwise, which the Appellants in this case had failed to do.”

9. The legal proposition which can be culled out from the combined reading of the aforesaid decisions is that merely on the reason that the applicant was found physically and mentally fit at the time of enrolment, it cannot be presumed that the disability was caused by the service rendered by him in the Army, and that too, for 2 years and 6 months. The above view is supported by Annexure A-1 Invaliding Medical Board proceedings also. The Invaliding Medical Board opined that the applicant was diagnosed with “Schizophrenia” at 20% for 2 years but further they found that “Schizophrenia” is a psychiatric disease which is not connected with service. Going by Para 423(a) and (c) of Regulations for Medical Services, 1983, we find that for the finding of attributability or aggravation it is essential to establish whether the disability bore a causal connection with the service conditions.

10. Going by the averments in Para 4.2 of the Original Application, we find that the applicant has put up a specific incident as a cause of disease. According to him, while on exercise on Rajasthan Border, he was on guard duty and at that time his superior ticked him for some activity and made him to do some front and back roll punishment. After the said incident, he could not recollect anything but he could realise vaguely that he was in some hospital. As per the documents held with him, he has undergone treatment for the illness "Schizophrenia" at Western Command Hospital, Chandimandir. In short, according to him, the cause of disease was punishment which caused harm to the body of the applicant imposed by his superior. But, except the aforesaid vague averments, no evidence has been adduced by him to prove the aforesaid incident. That apart, we further find that had it been true and correct, certainly he could have filed a complaint against his superior invoking the right granted to him under Section 26 of the Army Act. More importantly, no document has been produced by the applicant to prove that he was admitted in Western Command Hospital, Chandimandir from 15th Mar to 14th Oct

1985. The absence of material evidence on record is fatal to the cause of disability alleged by him.

11. That apart, we further find that the applicant was enrolled as a Gunner. He has no case that as a part of duty he was exposed to any adverse circumstances which would cause harm to his body or mind. On the other hand, he himself stated that he has lost both his parents during his prime age and there were nobody to look after him. Thus, he admits that his homely atmosphere was not good for his childhood.

12. Going by Para 54 of the Guide to Medical Officers (Military Pension), 2002, we find that certain circumstances are specifically enumerated as aggravating factors. But the applicant's case would not fall under any of the circumstances falling under clause (b) or (c) or (d) of Para 54. It is pertinent to note that the onset of the disease was after two years and during this period, he was not posted in any field service or HAA, or insurgency operations. In short, the absence of any kind of triggering factors is fatal to the claim put forward by the applicant for disability pension.

In the above analysis, we find that the respondents are justified in finding that the disability was neither attributable to nor aggravated by military service and thereby, the applicant is not entitled to get disability pension. Hence, this Original Application is devoid of merits and dismissed accordingly.

Sd/-
JUSTICE K. HARILAL
MEMBER (J)

Sd/-
AIR MARSHAL S.R.K. NAIR
MEMBER (A)

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