

ARMED FORCES TRIBUNAL
REGIONAL BENCH
GUWAHATI
(Through Video-conferencing)

O.A. NO.36 OF 2018

In the matter of:

Shri Shiva Thapa ... Applicant
Versus
Union of India & Ors. ... Respondent

For applicant : **Mr. Manik Chanda, Advocate**
For the Respondents : **Mr. B. Kumar, Advocate**

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN PM HARIZ, MEMBER(A)

ORDER

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who is aggrieved by the impugned order dated 14.04.2016 of the respondents rejecting applicant's claim for disability pension along with rounding off benefits with effect from the date he was invalidated out from service with arrears and interest.

Brief Facts of the Case

2. The applicant was enrolled in the Army on 06.05.2013 and was invalidated out from the service on 21.11.2013. The IMB

held on 29.08.2013 recommended the applicant to be invalidated out from service in medical category S5H1A1P1E1 for 'Trance and Possession Disorder' and assessed the disability percentage @ 20% for life and opined that the disability is neither attributable to nor aggravated by military service. Hence, percentage of disability for disability pension was assessed @ NIL and no disability pension was granted to individual on being invalidated out. The first appeal submitted against rejection of disability was rejected vide letter No.B/40502/426/Accountant General (A&E)/PS-4 (Imp-II) dated 30.04.2015 stating that - "Invaliding Disease (ID) 'Trance and Possession Disorder' is a psychiatric illness, which results from complex interplay of endogenous (genetic/biological) and exogenous (environmental and psychosocial) factors. In the instant case, there were no service related stressors. There was no evidence of any physical or sexual abuse during the training period. Individual presented with the symptoms of ID, when he was undergoing training before joining any active service in the armed forces. Hence ID is conceded as neither attributable to nor aggravated by military service in terms of Para 54, Chapter VI, GMO 2002, amendment 2008". Thereafter, the applicant submitted second appeal against

rejection of first appeal for grant of disability pension which was also rejected by the competent authority vide B/38046A/267/2015/Accountant General (A&E)/PS-4 (2nd Appeal) dated 19.04.2016. Hence, this OA.

Arguments by Counsel of the Applicant

3. The learned counsel for the applicant submitted that appeals of the applicant were rejected in a routine manner without application of mind which have been deprecated by the Hon'ble AFT (PB) in Ex. Sgt Girish Kumar v. UOI & Ors in O.A No. 1439 of 2016. The Counsel relied on the judgement of the Hon'ble Supreme Court in the case of Dharamvir Singh v. Union of India and others [(2013) 7 SCC 316] and several other judgements to strengthen his claim that a member is to be presumed in sound physical and mental condition upon entering into service if there is no note or record at the time of entrance. In the event of an employee who is discharged from service on medical ground/disability, such disability will be presumed to be due to military service and as such he is entitled to disability pension in terms of Regulation 173 and 173-A of the Pension Regulations for The Army-1961 (Part-1).

Arguments by Counsel of the Respondents

4. The learned counsel for the respondents took us through the IMB proceedings and submitted that on examination, the Medical Board had clearly brought out that the disability "Trance and Possession Disorder" could have existed before recruitment and was not overtly manifested during medical examination and hence, in terms of Regulation 179 of the Pension Regulations for The Army-1961 (Part-1), the disability was declared not attributable to or aggravated by military service. The counsel further submitted that the decisions cited by the applicant are not remotely connected to this case as the applicant had only served 7 months and 17 days of service. He has not even undergone advance training of his military career and had already become unfit.

Consideration

5. The issue to be decided is whether the disability of the applicant vis ""Trance and Possession Disorder" is attributable to military service which entitles the applicant for disability pension along with rounding off benefits?

6. We have heard both the parties and perused the material placed on record. 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 related to 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

(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 counter insurgency 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.

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, Lucknow 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 of 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. Moreover, the Supreme Court Judgement (supra) amplifies that mental disorders which cannot be medically detected during the enrolment process cannot be claimed to be attributable to rigours of service at a later stage: *"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"*.

9. Moreover, **Para 5** of the Entitlement Rules for Casualty Pensionary Awards to the Armed Forces Personnel 2008 makes it clear that the medical test at the time of entry is not exhaustive, but its scope is limited to broad physical examination. Therefore, it may not detect some dormant disease. Besides, certain hereditary constitutional and congenital diseases may manifest later in life, irrespective of service conditions. The mere fact that a disease has manifested during military service does not per se establish attributability to or aggravation by military service.

10. The Hon'ble Supreme Court in the case of UOI VS Ravinder Kumar in **Civil Appeal No.1837/2009** held that- *"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".

11. From the material placed on record and the averments made by the Learned Counsel for the Applicant, there is no evidence of even a remote causal link to any service related trauma which can be considered to be a contributory factor to the mental condition of the applicant who has been only under training; that too for just 6 months.

12. From, the above, it is clear that the disability of the applicant has no causal connection with service. The release medical board has rightly considered the disability as NANA and we find no infirmity in its proceedings. Therefore, the applicant is not entitled for grant of disability element of pension. The application is devoid of merits, hence dismissed.

Pronounced in open Court on this _____ 15th _ day of May, 2023.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

**(LT GEN P.M. HARIZ)
MEMBER(A)**

ashok

OA-36/2018
Shri Shiva Thapa