

COURT - II
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

(Through Video Conferencing)

OA 1914 /2017

Ex Rect Keshav Dutt Oli
Versus
Union of India and Ors

... Applicant

... Respondents

For Applicant : Mr. Rajesh Mandal, Advocate
For Respondents : Mr. Anil Kumar Gautam, Sr. CGSC

CORAM

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

O R D E R

1. The Applicant filed this OA to direct the Respondents to grant Disability Pension @ 30% w.e.f. 22.6.1990 alongwith Broadbanding Benefits from 30% to 50% from 1.1.1996.
2. The Applicant submits that he was recruited for undergoing training in the Indian Army on 5.8.1989. He was involved in all the activities and the instructors were satisfied with his performance. When he was involved in actual firing, the sound was deafening and he plugged cotton in his ears to lessen the sound effect. The Applicant submits that after 19 weeks of training, on 31.12.1989 he was asked to report to medical authorities and his training came to an abrupt end. The Applicant was

informed that due to mental retardation, he is to be invalidated out from service. The Applicant submits that he was discharged from service on medical grounds due to the ID, Mental Retardation, on 21.6.1990 after serving for 40 weeks and the ID was assessed @ 30/% which was opined as neither attributable to nor aggravated by service, being constitutional in nature. The Applicant submits that he was not given any reason about his failure in physical or written activities. The Applicant further submits that the Reassessment Medical Board which was due in 1995 was not constituted by the Respondents as the Release Medical Board had assessed the ID @ 30% Composite Disability for 5 years. The Applicant also submits that he had approached various authorities for seeking justice. The Applicant was granted Rs. 375/- at the time of invalidment. The Applicant relies on various judgements passed by the Hon'ble Supreme Court and other court orders. Hence, the Applicant filed the OA seeking the relief as prayed for.

3. The Learned Counsel for the Respondents admits that the Recruit was enrolled in the Army Ordnance Corps on 7.8.1989 and invalidated out from Army service w.e.f. 20.6.1990 under Army Rule 13(3) III (iii) in Medical Category EEE for the disability "Mental Retardation". The Respondents submit that the Applicant, as per Part II Order No.3/0127/90 dated 5.7.1990, while undergoing Basic Military Training (BMT) at Army Ordnance Corps Centre, was initially admitted at Military Hospital, Secunderabad on 30.12.1989 and discharged on 12.1.1990 for further

admission at Military Hospital, Bangalore. The Applicant was admitted at Command Hospital, Air Force (CHAF) Bangalore on 14.1.1990 for further investigations. The Respondents submit that as per opinion of Group Captain P Das, Senior Adviser (Psychiatry) of Command Hospital, Air Force, Bangalore dated 23.3.1990, "This young recruit came under psychiatric evaluation because of certain oddity of his behaviour noted during his training. His performance was very poor, unable to comprehend simple instructions and had to be helped to keep himself clean and hygienic. Psychiatric evaluation has confirmed subnormality of intelligence (IQ below 70) with associated disturbance of adaptive behaviour. Relevant investigations including CT Scan revealed no evidence of any intracranial pathology. A case of Mental Retardation (Primary) and is uneducable. With this level of subnormal intellectual potential, the recruit is not trainable and will not be able to perform his duties. " Recommend to be invalided out of service in Cat. EEE."

The Respondents submit that the Applicant was brought before the Invaliding Medical Board held at Military Hospital, Secunderabad vide AFMSF-16 dated 6.6.1990 and the Applicant was invalided out in Medical Category EEE due to the ID Mental Retardation and assessed the ID @ 30% for five years, opining that the ID is neither attributable to nor aggravated by military service. The Respondents submit that the claim of the Applicant's Disability Pension was rejected by the PCDA vide letter No.G3/87/163/2/91/AOC dated 5.6.1991 on the grounds that the disability was not aggravated by military service and the fact was

communicated to the Applicant by Army Ordnance Corps Records vide letter No.C/6930152/Pen/Dis III dated 17.7.1991 with an advice to appeal against the decision within six months. The Applicant had sent an Appeal dated 5.8.1991 against the rejection of claim for Disability Pension but the same was rejected by PCDA vide letter No.G3/87/163/91/AL dated 5.6.2991 and the same was communicated to the Applicant vide letter dated 22.7.1992. The Respondents submit that the Applicant submitted an Application dated 2.4.2014 to review his case and grant him Disability Pension and medical/canteen facility but the same was rejected vide letter No.C/6930152/Pen/Dis IV dated 25.4.2014. The Applicant further submitted his 2nd Appeal on 23.9.2017 to Addl. Director General Personal Services (PS-4) and the same was also rejected vide letter No.C/6930152/Dis III dated 14.10.2017 on the grounds that the ID, Mental Retardation was considered as neither attributable to nor aggravated by military service by the IMB and also the submission of the 2nd Appeal, after a lapse of 25 years, cannot be considered as it is time barred as per the existing rules and policy. Hence, the Respondents pray to dismiss the OA being devoid of merit and due to delay and laches.

4. We have heard the arguments of the Learned Counsel for the Applicant as well as the Respondents and also carefully perused the material placed on record.

5. Following facts are germane to this case:

(a) the Recruit was enrolled in the Army Ordnance Corps on 7.8.1989 for recruit training and invalided out from Army Service w.e.f. 20.6.1990 under Army Rule 13(3) III (iii) in Medical Category EEE for the disability "Mental Retardation".

(b) The Recruit, while undergoing Basic Military Training (BMT) at Army Ordnance Corps Centre, was initially admitted at Military Hospital, Secunderabad on 30.12.1989 and discharged on 12.1.1990 for further admission at Military Hospital, Bangalore. The Applicant was again admitted at Command Hospital, Air Force (CHAF) Bangalore on 14.1.1990 for further investigations. The mental disability came to light in less than 5 months of recruit training.

(b) The Invaliding Medical Board held at Military Hospital, Secunderabad vide AFMSF-16 dated 6.6.1990 considered the ID, Mental Retardation and assessed @ 30% for five years, opining that the ID is neither attributable to nor aggravated by military service.

(c) The claims of the Applicant for grant of Disability Pension were rejected by the PCDA on the grounds that the ID of the Applicant was a constitutional disease and neither attributable to nor aggravated by military service. The 2nd Appeal of the Applicant filed after a lapse of 25 years was not processed as it was time barred.

6. From the limited material available on record and the averments of the Learned Counsel for the Applicant, no extraordinary service related

causal links have been brought to light in the extremely limited period of 40 weeks of training which could have a bearing on the mental condition of the Applicant. It is of significance that the disability came to light within five months of commencement of recruit training.

7. Extract of the opinion of Group Captain P Das, Senior Adviser (Psychiatry) of Command Hospital, Air Force, Bangalore dated 23.3.1990, is given below:

"This young recruit came under psychiatric evaluation because of certain oddity of his behaviour noted during his training. His performance was very poor, unable to comprehend simple instructions and had to be helped to keep himself clean and hygienic. Psychiatric evaluation has confirmed subnormality of intelligence (IQ below 70) with associated disturbance of adaptive behaviour. Relevant investigations including CT scan revealed no evidence of any intracranial pathology. A case of Mental Retardation (Primary) and is uneducable. With this level of subnormal intellectual potential, the recruit is not trainable and will not be able to perform his duties. Recommend to be invalided out of service in Cat. EEE.

In view of the aforesaid, we find no infirmity in the proceedings of the Medical Board nor any cogent reasons to interfere in its findings.

8. Germane to this case is also the issue of Primacy of the Medical Board as explicitly clarified in case of UoI vs Ravinder Kumar in Civil Appeal No.1837/2009 decided on 23.5.2012 which viewed 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".

9. Paras 5 and 6 of Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel 2008 clearly elucidates that causal connection between the military service and the disability has to be established by the appropriate authorities and the mere fact that a disease has manifested during military service, in this instant case recruit training does not per se establish attributability to or aggravation by military service.

10. In view of the above, we are of the considered opinion that the ID "Mental Retardation" falls outside the purview of attributability to military service and hence, the relief asked for is not sustainable. By no stretch of imagination can mental retardation be attributable to military service. The question which then arises is how did such a candidate with mental retardation qualify in the enrolment process? It is well known that mental disorder can escape detection at the time of enrolment, hence benefit of doubt cannot be given to the applicant merely on the grounds that the disease could not be detected at the time of enrolment.

11. The Hon'ble Supreme Court in **Narsingh Yadav v. Union of India**, **(2019) 9 SCC 667** has held that there cannot be a mechanical application of the principle that "any disorder not mentioned at the time of enrollment is presumed to be attributed to or aggravated by military service". Every case has to be examined and it has to be ascertained whether the duties assigned to the individual might have led to the disorder. The Supreme Court while confirming the findings of the IMB in the said case, wherein the appellant had been in service for more than three years, held as under:-

"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. The appellant was a young boy of 18 years at the time of enrolment and had been boarded within 3½ years of his service. Even if he was suffering from any mental disorder prior to enrolment, the same could not be detected as there were intervals of normality. The appellant was posted in peace station as a Vehicle Mechanic. Neither the nature of job nor the place of posting was such which could have caused stress and strain leading to disability as attributed to or aggravated by military service.

20. In the present case, Rule 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."

12. Similar view was taken by the Hon'ble High Court of Delhi in W.P.(C) 46/2021 & C.M. No. 188/2021 [Ex Rect Rajesh Kumar Vs. Union of India & Ors.] where the disease of mental disorder started within less than 3 months of his enrolment. O.A. No. 470/2015 was dismissed by AFT, Principal Bench, New Delhi. Writ petition filed before the Hon'ble High Court was also dismissed holding that Invaliding Medical Board as well as Tribunal were correct in holding that the disability was neither attributable nor aggravated by military service as the time spent in service was too short to cause stress or strain that might lead to such disability. It is apparent that a grave error has occurred by which the

Applicant's mental condition was not detected during the selection process. Notwithstanding this, the Applicant is not entitled to claim pensionary benefits attributing his condition to rigours of military service. In the instant case also, within five months of training disability came to light which period is too short to cause stress and strain that might lead to such disability. Hence, applicant is not entitled to claim pensionary benefits attributing his condition to military service.

13. The Applicant has also approached this Tribunal after a lapse of 25 years with no cogent reasons for this inexplicable delay. Therefore, in the light of the principles settled 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.

14. Resultantly, the OA lacks strength on all counts and stands dismissed. The connected MA also stands disposed off.

Pronounced in open Court on this 22nd day of September, 2022.

[JUSTICE SUNITA GUPTA]
MEMBER (J)

[LT GEN BOBBY CHERIAN MATHEWS]
MEMBER (A)

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