COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. 461 of 2018

Ex. Hav. Naresh Pal Singh ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. Y.P. Sharma, Advocate and
Mr. A.K. Tyagi, Advocate
For Respondents : Mr. Anil Kumar Gautam, Sr. CGSC

CORAM
HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P.MOHANTY, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability pension.

2. The applicant was enrolled in the Indian Army on 28.08.1996 and prematurely discharged on 01.12.2012 after serving for 16 years and 95 days of qualifying service. The Release Medical Board dated 19.09.2012 held that the applicant was fit to be discharged from service in composite

low medical category for the disabilities - (i) ALCOHOL DEPENDENCE SYNDROME (ADS) @ 6-10% for life and (ii) SOLITARY SEIZURE @ 20% for life, with composite disability @ 20% for life while the qualifying element for disability pension was recorded as NIL for life on account of disabilities being treated as neither attributable to nor aggravated by military service (NANA).

3. The claim of the applicant for grant of disability pension was rejected on 07.02.2013 and the same was communicated to the applicant vide letter no. 1369721K/NPS/D-Pen dated 30.03.2013 stating that the aforesaid disabilities were considered as neither attributable to nor aggravated by military service.

4. After a lapse of more than four years, the applicant filed an OA no. 262/2016 before this Hon'ble Tribunal for grant of disability pension, which was dismissed on the ground that the applicant has not filed the first appeal against the decision of competent authority rejecting his disability pension, within six weeks. Hon'ble Tribunal was pleased to direct that if the applicant filed such an appeal within two weeks from the date of order passed by Hon'ble Tribunal, the same shall be

considered and disposed of by a reasoned order within two months thereafter.

5. Subsequently, a first appeal dated 10.06.2016 was preferred by the applicant which was returned by IHQ, MoD (Army) with observation that the statement of case justifying delay in submission of appeal duly recommended by OIC Records and undertaking from appellant is required. However, Records, Brigade of the Guards re-submitted the first appeal of the applicant to IHQ, MoD vide letter No. 13697212K/NPS/D-Pen(A) dated 16.05.2017 stating that the time barred sanction is not required in this case being a court case. Accordingly, IHQ, MoD (Army) rejected the appeal of applicant vide letter No. B/40502/447/2016/AG/PS-4(Imp-II) dated 21.09.2017. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

6. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, Learned Counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into

the service, and that he served in the Army at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

7. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 82 of the Pension Regulations for the Army, 2008 (Part-I), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @ 20% or more.

8. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disabilities of the applicant were assessed as "neither attributable to nor aggravated" by Army service and not connected with the Army service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension.

9. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability was assessed to be above 20% which is the bare

minimum for grant of disability pension in terms of Regulation 82 of the Pension Regulations for the Army, 2008 (Part-I). The only question that arises in the above backdrop is whether disability suffered by the applicant was attributable to or aggravated by military service.

10. A close perusal of the Release Medical Board shows the opinion of the medical specialist as under:

> ***"This 35 yrs old serving soldier was initially referred for psychiatric evaluation and management by the physician after the individual presented to him in the last week of Oct 2010 at 333 Fd Hosp with alcohol withdrawal features including withdrawal seizure following abrupt cessation of alcohol.***
>
> ***Detailed history revealed long standing use of alcohol of about 10 to 12 years duration, initially in small quantities on issue days, with gradual development of tolerance leading to progressive increase in consumption to the present level of 240 to 300 ml of spirits daily. H/o stereotyped drinking pattern, loss of control over drinking resulting in frequent binge drinking, craving and withdrawal symptoms in the form of restlessness, excessive sweating and disturbed sleep on abstinence followed by relief drinking."***

11. 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 which impinge on Attributability and Aggravation of Psychiatric Disorders in Para 54 which are reproduced below:

***54.* <u>Mental & Behavioural (Psychiatric) Disorders</u>**

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 of 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 or 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 disease because of the stress and strain involved like service in combat area including counterinsurgency 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.

12. From the material placed on record, there is no evidence to find 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.

13. Before coming to a considered opinion, it would be pertinent to refer to the judgement 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. The Supreme Court was pleased to opine-

> ***"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.***
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> ***21. Though, the opinion of the Medical Board is subject to judicial review, the Courts are not possessed of expertise to dispute such a 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".***

14. Moreover, the verdict of the Hon'nble Supreme Court in *Ex Cfn Narsingh Yadav Vs UOI & Others* (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, and observed as under:

> ***"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".***

15. Regarding the issue of Primacy of the Medical Board, the Supreme Court in its judgement in *UOI Vs Ravinder Kumar* in Civil Appeal No. 1837/2009 decided on 23.05.2012, has explicitly 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.***
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> ***6. In the instant case, the Medical Board has opined as under:-***
> ***"ID. Generalised Tonic Seizure. MA opined that ID is genetic in origin, not connected with service.***
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> ***Thus in view of the above, it is evident that the ailment with which respondent has been suffering from is neither aggravated nor attributable to the Army Service".***

16. Applying the above parameters to the case at hand, we find no infirmity in the opinion of the Medical Board and are of considered opinion that the disabilities (i) ALCOHOL DEPENDENCE SYNDROME (ADS) @ 6-10% for life and (ii) SOLITARY SEIZURE @ 20% for life, cannot be attributed to service and hence, the relief asked for is not sustainable.

17. Therefore, in our considered view, the OA is devoid of merits.

18. Consequently, the O.A. 461/2018 is dismissed.

19. No order as to costs.

Pronounced in the open Court on 13th day of March, 2023.

(ANU MALHOTRA)
MEMBER (J)

(LT GEN C.P MOHANTY)
MEMBER (A)

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