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**(20) 06 AFT CK 0033**

**In the Armed Forces Tribunal**

**Case No :** Original Application No. 1153 Of 2018, Miscellaneous Application No. 1560 Of 2018

Manoj Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision :** 19-06-20

**Acts Referred:**

**Citation :** (20) 06 AFT CK 0033

**Hon'ble Judges :** Sunita Gupta, J;B.B.P. Sinha, Member (A)

**Bench :** Division Bench

**Advocate :** V.P. Vaishnav, Shyam Narayan

**Final Decision :** Dismissed

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**Judgement**

MA 1560 OF 2018

1. For the reasons carved out in the application, the delay of 9550 days in filing of Original Application is condoned. MA stands disposed off.

OA 1153 OF 2018

The applicant, Ex. GNR Suresh Chandra, through the medium of the instant Original Application is seeking the following reliefs:

(a) Call for the records including the IMB proceedings as the finding and opinion as approved by the competent authority, based on which

the respondents in most illegal manner rejected the claim of the applicant for disability pension in respect of disability PERSONALITY

DISORDER and thereafter quash all such orders.

(b) Direct the Respondents to extend the benefit of broad banding in respect of applicant's disability of PERSONALITY DISORDER and

found it off to 100% being CAT 'BEE' (Psy) permanent and subsequently

invaliding out from the service.

(c) Further, direct the respondents to process the claim of the applicant in respect of disability PERSONALITY DISORDER along with

arrears with an interest @12% as expeditiously as possible from the date of discharge from the service La 30.09.1990.

(d) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Army on 01.01.1985

and was invalided out w.e.f. 29.09.1990 after rendering 05 years, 08 months and 22 days for service under Rule 13(3) item III(V) of Army Rule, 1954

on account of permanent Low medical Category. His Invaliding Medical Board (IMB) was held at Base Hospital, Delhi Cantt. on 12.09.1990. The

IMB had opined his disability ""PERSONALITY DISORDER"" Â©20% for five years as Neither Attributable to Nor Aggravated (NANA) by military

service, psychosomatic disorder not connected with service. Accordingly, the disability pension claim of the applicant was rejected by the PCDA

(Pensions) vide their order dated 30.04.1991. The applicant preferred petition dated 23.08.2017 which was replied by the respondents vide their letter

dated 20.01.2018 with enclosed letter dated 10.10.2017 intimating that the disability pension claim of the applicant was rejected by the PCDA (P),

Allahabad. Being aggrieved, the present O.A has been filed.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in a medically fit condition and has been invalided out of service in

Low Medical Category, as such, his disability should be considered as attributable to and aggravated by military service and he should be granted

disability pension.

4. The Ld. Counsel for respondents has highlighted the opinion of Invaliding Medical Board, wherein the applicant's disease ""PERSONALITY

DISORDER"" has been opined by the IMB as Neither Attributable to Nor Aggravated by military service and not related to service. He has drawn

attention to the disease manifesting within three years and six months of enrolment. The learned counsel for the respondents claimed that since the

disease is opined as NANA by IMB, hence, the claim of disability pension of the applicant has rightly been rejected. He prayed for dismissal of the

O.A.

5. We have heard the parties and perused the IMB. The question before us is straight and simple i.e. is the disease of the applicant attributable to or aggravated by Military service?

6. On careful scrutiny of the IMB records that this mental disorder originated on 06.05.1988 that is within a span of three years and six months from the date of enrolment of the applicant. Further, we have not found any valid reason so as to establish that the applicant's disease i.e.

PERSONALITY DISORDER"" is related to stress and strain of military service within a short span of service of three years and six months.

7. Thus considering all issues and the fact that this disability has manifested within a short span of three years and six months after enrolment, we are

of the opinion that since mental disorders can not be detected at the time of enrolment, therefore, we can not give benefit of doubt to the applicant

specially so when the disease has been manifested within a short span of enrolment. Thus we are in agreement agree with the opinion of the medical

board that the disease is neither attributable to nor aggravated by military service (NANA).

8. In this context we would like to quote the opinion of Hon'ble Supreme Court in Civil Appeal No 1837/2009, tilted Union of India & Another vs. Ex

Rfn Ravinder Kumar, the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that:-

Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension

brushing aside the opinion of the Medical Authorities, record the specific finding to the effect that the disability was neither attributable to

nor aggravated by military service, the court should not ignore such a finding for the reason that Medical Board is specialized authority

composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability

due to military service and the conditions of service resulting in disablement of the individual"".

9. Additionally, we would also like to quote the opinion of Hon'ble Supreme Court on the expertise of Medical Board in Civil Appeal No 7672 of 2019

in Ex Cfn Narsingh Yadav vs Union of India & Ors as under :-

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 'Paranoid Schizophrenia (F 20.0)' 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.

10. In view of the above, the O.A. is liable to be dismissed. It is accordingly dismissed.

11. No order as to costs.

12. Pending application(s), if any, also stand disposed of.

Pronounced in the open court on 19th June 2020.