
(2020) 03 AFT CK 0021

In the Armed Forces Tribunal

Case No : Original Application No. 929 Of 2018

Pankaj Rawat

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2020) 03 AFT CK 0021

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

Bench : Division Bench

Advocate : Ajit Kakkar, S.R. Swain

Final Decision : Dismissed

Judgement

1. Being aggrieved by denial of disability pension, the applicant has filed the present Original Application under Section 14 of the Armed Forces

Tribunal Act, 2007 wherein he has sought the following reliefs:-

(a) To direct the respondents to place all medical records including medical boards of the applicant.

(b) To quash the letter dated 23.05.2014, 27.07.2015, 30.11.2016 and 14.03.2018 denying invalid pension to the applicant.

(c) To direct the respondents to grant invalid pension to the applicant from the date of invalidment in view of the above mentioned circumstances and

the settled law with regard to grant of invalid pension.

(d) To grant the broad banding of Invalid Pension.

(e) To direct the respondents to pay 12% interest on the arrears of pension and other benefits.

(f) To grant such other relief appropriate to the facts and circumstances of the

case as deemed fit and proper.

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force (IAF) on 28.03.2012 and was invalided out of service w.e.f.

29.04.2014 in low medical category due to (i) 'Schizophrenia (F 20.0)' and (ii) 'Intentional Self Harm' having rendered only two years of service. The

IMB of the applicant had assessed his disabilities @ 40% and 1- 5% respectively for life neither attributable to nor aggravated by military service

(NANA). Disability pension claim and first appeal of the applicant were rejected. It is in this perspective that this O.A. has been filed.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded

that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time

of entry. In the event of his subsequently being invalided out from service on medical grounds, any deterioration in his health is to be presumed due to

service conditions. He pleaded that the applicant was under stress and strains due to rigors of service conditions which may have led to occurrence of

the disability. He further stressed that the Medical Board has also mentioned onset/origin of the disease during service/training therefore the disability

should be accepted as attributable to military service. The Ld. Counsel for the applicant pleaded for disability pension to be granted to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that since the IMB has opined the disability to be NANA, hence the applicant is not

entitled to disability pension. He further submitted that the applicant is not entitled to disability pension in terms of Para 54 of Chapter VI of GMP-

2008. The Ld. Counsel for the respondents further submitted that claim for invalid pension has rightly been rejected by the competent authority as the

minimum period of qualifying service actually rendered and required for grant of invalid pension is ten years but in the instant case the applicant has

put in only 02 years of service. He pleaded the O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. On careful perusal of the medical documents, it has been observed that the applicant had developed the aforesaid disabilities within 112 years of

joining the service. He was administered treatment till his invalidation from

service. Wg Cdr Amitabh S Saxena, Classified Specialist (Psychiatry), has endorsed the following diagnosis and opinion on the applicant:-

Mental Status Examination on admission revealed a perplexed individual who did not maintain eye contact. He was circumstantial and had a fearful, shallow affect, with magical thinking, obsessions, delusions of thought, withdrawal and persecution. He had ambivalence. He had elementary auditory hallucinations. He had helplessness. He had deranged biodrives with impaired judgment and insight in a clear sensorium.

However, in view of the onset of a major psychotic illness that has a propensity to recur and relapse, in an air warrior who is at the threshold of a career in the Armed Forces, juxtaposed the fact that the patient attempted self harm, as well as instructions on the disposal of such cases as per

DGAFMS medical memorandum 171/2002, the patient is recommended to be invalided out of service.""(underlined by me)

7. Since it is well known that mental disorders can escape detection at the time of enrolment hence benefit of doubt cannot be given to the applicant

merely on the ground that the disease could not be detected at the time of enrolment. Since there is no causal connection between this disease and

military service and the disease has manifested within one and half years of enrolment, hence we are in agreement with the opinion of the IMB that

the disease is NANA.

8. Apart from, in Civil Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India & Ors it has been held by the Honble Supreme Court that

mental disorders cannot be detected at the time of recruitment and their subsequent manifestation (in this case after about three years of service) does

not entitle a person for disability pension unless there are very valid reasons and strong medical evidence to dispute the opinion of Medical Board.

Relevant part of the aforesaid judgment is as given below:- ""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. 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.

9. In view of the above, the O.A. is devoid of merit and deserves to be dismissed. It is accordingly dismissed.

No order as to costs.

Pending applications, if any, are disposed of accordingly.

Pronounced in the open court on 6th March, 2020.