(2020) 01 AFT CK 0068

In the Armed Forces Tribunal

Case No : Original Application No. 312 Of 2018

Ran Singh — APPELLANT

Vs

Union Of India And Others — RESPONDENT

Date of Decision : 15-01-2020

Acts Referred:

Citation : (2020) 01 AFT CK 0068

Hon'ble Judges : Sunita Gupta, J;Philip Campose, Member (A)

Bench : Division Bench

Advocate : Mohan Kumar, V.S. Tomar

Final Decision : Dismissed

Judgement

1. The applicant, having been found medically and physically fit, was enrolled in the Army Rajputana Rifles on 08.11.1973. Since the applicant was

suffering from 'Generalised Epilepsy of Idiopathic Origin (345)' and was recommended medical category EEE (T) S1H1A1P2E1, he was invalided out

from service on 16.11.1977. The Invalidment Medical Board held on 29.09.1977 assessed the percentage of disability @ 30% for two years.

However, the disability was held to be 'neither attributable to nor aggravated by military service'. The claim of the disability pension was rejected by

the PCDA (Pension). The first and second appeals preferred by the applicant were rejected. Hence, a Legal Notice dated 09.01.2017 was also sent

to the respondents, which was replied to on 02.03.2017 as stated by the respondents.

2. Learned counsel for the applicant contended that the instant matter is squarely covered by a catena of decisions of the Honble Supreme Court

including Dharamvir Singh Vs. Union of India and Ors. (2013) 7 SCC 31,6 Union

of India and Ors. Vs. Rajvir Singh (2015) 12 SCC 26 4and Union of

India and Ors Vs. Angad Singh Titaria (2015) 12 SCC 257. Further, the claim of the applicant is also supported by relevant rules.

3. Per contra, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the IMB, being an Expert

Body, found the disability ""Neither Attributable to Nor Aggravated by Military Service"" and that is for only two years.

4. We have heard learned counsel on both sides and have also perused the documents available on record.

5. We have noted that the IMB has mentioned that the disease was first started in the year 1973. The applicant narrated to the specialist that he has a

history of recurrent seizures in the year 1972. The Case History and Opinion of Specialist dated 22.09.1977 filed by the respondents is relevant. The

same is reproduced as hereunder:

Case Summary & Opinion 22.09.77 The Rfn, aged 22 years present with history of recurrent seizure since 1972.Initially he used to get

recurrent seizure every 1-2 day, however, seizure frequency reduced to 5-6 months since 1973. Last seizure occurred on 2nd week of July,

1977. Details of rictal phase are not known to him. Denied H/O aura post rictal paralysis automatic or history tongue bite and incontinuance

during these episodes. Denied H/O such episode in the past head injury or high fever. He is non vegetarian.

On Examination he is an averagely built individual, normotensive. No clubbing or significant Iymphadenopathy detected. Neurological

examination did not reveal any localising neurological deficit. DTJ are symmetrical with planter flexor on both side. Fundii are normal. No

subcutaneous nodule felt.

He has been investigated fully. This all investigation including haemogram, X-Ray chest, X-Ray skull, X-Ray thigh, CSF and EEG

examination are with in normal limits. Brain Scan is also non contributory. STS is non reactor. In view of the above he is a case of

generalised epilepsy of probable idiopathic origin as his all relevant investigation for symptomatic epilepsy are non contributory. As a result

of generalised epilepsy he will not be fit soldier and his service is only 4 years.

6. From the above, it is clear that the applicant has a history of recurrent seizure

since 1972, which was recurrent every 1-2 days initially and

thereafter the frequency was reduced to 5-6 months since 1973. The applicant joined the Army on 08.11.1973 and after around 4 years of service, he

was invalided out from service on 16.11.1977. This is a disease which may develop at any age without obvious discoverable cause and onset of

epilepsy does not exclude a constitutional idiopathic type and is one of the diseases which may be undetectable by physical examination.

7. Moreover, in Civil Appeal No. 7672 of 2019 in Ex Cfn Narsingh Yadav Vs. Union of India & Ors. (Judgment dated 03.10.2019), 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 12 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 /996 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 dueto 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.

8. Thus considering all the issues involved in the case which include the counter affidavit, IMB and also the Case Summary and Opinion filed by the

respondents, we are of the opinion that the disease has pre-existed in 1972 and the applicant had a history of recurrent seizure since 1972 frequency

of which was 1-2 days initially as detailed in the Case Summary 86 Opinion, reproduced above. Thus the applicant has failed to make out a case for

himself.

9. In view of the foregoing, present OA lacks merit and is dismissed. No order as to costs.

