

(2020) 03 AFT CK 0038

In the Armed Forces Tribunal

Case No : Original Application No. 1245 Of 2016

Vikas Kumar Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0038

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

Bench : Division Bench

Advocate : V.S. Kadian, Avdhesh Kumar Singh

Final Decision : Dismissed

Judgement

1. Aggrieved by the impugned order dated 14.09.2016¹ denying him disability pension, the applicant has filed the instant O.A seeking the following

reliefs:

(a) Quash and set aside the impugned letter No. Air HQ/99798/1/8972969/DAV/DP/CC dated 14.09.2016. And/or

(b) Direct respondents to grant disability pension to the applicant i.e. (service element and disability element) after rounding off/broad banding @ 50%

in terms of Govt of India, min of Defence letter No 1(2)/97/D(Pen-C) dated 31.01.2001 and law settled by Honible Supreme Court in Civil Appeal No.

418/2012 titled UOI & Ors v. Ram Avtar vide judgment dated 10.12.2014. and/or

(c) Direct respondents to pay the due arrears of disability pension with interest @ 12% p.a. from the date of discharge of the applicant with all the

consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. The brief facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Air Force on 01.07.2015 and

was invalided out of service w.e.f. 22.01.2016 after rendering 206 days of service in low medical category ""EEE"" on account of disability

NEUROCYSTICERCOSIS FRONTAL LOBE (FRESH) 1CD No B 69.9"". His Invaliding Medical Board (IMB) was held at ATS Belagavi on

09.11.2015. The duly constituted Invaliding Medical Board had viewed his disability ""NEUROCYSTICERCOSIS FRONTAL LOBE (FRESH) 1CD

No B 69.9"" as Neither Attributable to Nor Aggravated (NANA) by military service and not connected with military service due to disease manifesting

within a short period after enrolment i.e. on 28.08.2015 and assessed the disability @ 30% for two years. Accordingly, the disability pension claim of

the applicant was rejected by Air HQ, Directorate of Air Veterans, New Delhi. The applicant submitted a legal notice dated 03.09.2016 which was

suitably replied by the respondents. Hence the O.A.

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. He further submitted that IMB has assessed the disability @ 30% for two years and his claim has been unfortunately rejected by

the respondents.

4. The respondents have relied upon the opinion of Invaliding Medical Board, wherein the applicant's disease ""NEUROCYSTICERCOSIS FRONTAL

LOBE (FRESH) ICD No B 69.9"" has been opined by the board as Neither Attributable to Nor Aggravated by military service due to it being not

related to service and manifesting within one month and twenty eight days of enrolment. The learned counsel for the respondents claimed that the

claim of disability pension of the applicant has rightly been rejected and 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, we have noticed that the applicant was enrolled as recruit on 01.07.2015. Within 1 month and 28 days of

recruitment i.e. on 28.08.2015, he was transferred/investigated by the senior advisor in medicine and neurologist for abnormal behaviour for the history of jerky movement in upper and lower limb associated with drooling of saliva and unrolling of eyes.

7. In the above circumstances, he was recommended to be invalided out of service by relevant medical specialist and was invalided out of service in medical category P5/ApGp within about 6-7 months of enrolment.

9. Apart from it, in Civil Appeal No 7672 of 2019 in Ex CM Narsingh Yadav vs Union of India & Ors it has again been held by the Honible Supreme

Court that certain 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:-

15. We find that it is not mechanical application of the principle that any disorder not mentioned at the time of enrolment is presumed to be attributed to or aggravated by military service.

The question is as to whether the person was posted in harsh and adverse conditions which led to mental imbalance.

16. Annexure 1 to Chapter IV of the guide to Medical Officers (Military Pensions), 2002- ""Entitlement; General Principles"" points out that

certain diseases which may be undetectable by physical examination on enrolment including the Mental Disorders; Epilepsy and Relapsing

forms of mental disorders which have intervals of normality, unless adequate history is given at the time by the member. The Entitlement

Rules itself provide that certain diseases ordinarily escape detection including Epilepsy and Mental Disorder, therefore, we are unable to

agree that mere fact that Schizophrenia, a mental disorder was not noticed at the time of enrolment will lead to presumption that the disease

was aggravated or attributable to military service.

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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.

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

11. No order as to costs.

Pronounced in the open Court on 5th March, 2020.