

(2020) 03 AFT CK 0044

In the Armed Forces Tribunal

Case No : Original Application No. 1255 Of 2017, Miscellaneous Application No. 943 Of 2017

Vinod Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0044

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

Bench : Division Bench

Advocate : Praveen Kumar, Harish V Shankar

Final Decision : Dismissed

Judgement

M.A. No. 943/2017

1. For the reasons carved out in the Application, the delay of 10270 days in filing the Original Application is hereby condoned.

M.A. stands disposed off.

O.A. No. 1255/2017

Aggrieved by the impugned order dated 31.05.2017, denying him disability pension, the applicant has filed the instant O.A seeking the following reliefs:

(a) Quash and set aside the impugned letters dated 31 May 2017.

(b) Direct Respondents to grant of disability pension @ 60% and rounding off the same to 75% for life to the applicant with effect from 24 May 1989

i.e. the date of invaliding out from service with interest @12% p.a. till final payment is made.

(c) 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 09.12.1986 and

was invalided out of service w.e.f. 23.05.1989 after rendering 2 years and 5 months of service in low medical category ""`EEE1 on account of disability

SCHIZOPHRENIA"""". His Invaliding"" Medical Board (IMB) was held at MH Ahmedabad on 16.02.1989. The duly constituted Invaliding Medical

Board had viewed his disability """"SCHIZOPHRENIA"""" as Neither Attributable to Nor Aggravated"" connected with military service and assessed the

disability @ 60% 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 19.05.2017 which was suitably replied by the respondents vide order dated 31.05.2017, denying the

disability pension. Hence the O.A.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in the service and any disability not recorded

at the time of enrolment should be presumed to have been caused subsequently. The action of the respondents in not granting disability pension to the

applicant is illegal. In this regard, he relied on the decision of the Hon'ble Supreme Court in Dharamvir Singh v. Union of India and others, (2013) 7

SCC 316 and submitted that for the purpose of determining attributability of the disease to military service, what is material is whether the disability

was detected during the initial pre-commissioning medical tests and if no disability was detected at that time, then it is to be presumed that the disability

arose while in service, therefore, the disabilities of the applicant are to be considered as aggravated by service and he is entitled to get disability

pension @ 60% and the same is to be rounded off to 75% for life.

4. The respondents have relied upon the opinion of Invaliding Medical Board, wherein the applicant's disease ""SCHIZOPHRENIA"" has been opined

by the board as Neither Attributable to Nor Aggravated by military service (NANA) being constitutional disorder and not connected with service. 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.

6. On careful scrutiny of the IMB records, we have noticed that the applicant was enrolled on 09.12.1986. he was admitted in MH Baroda on

17.10.1988 for his abnormal behaviour. From MH Baroda he was transferred to MH Jodhpur and during observation at MH Jodhpur, he displayed

features of acute Schizophrenia. He was treated with antipsychotic drugs and thereafter he was transferred to MH Ahmedabad for further treatment

by the Specialists.

7. The opinion of Maj D Saldanha, Graded Specialist in Psychiatry of MH Ahmedabad dated 02.02.1989 is as under :-

This is a case of Schizophrenia ICP 295 of acute onset without any participating factor in whom fundamental disturbances in the personality, thinking,

emotions, volitions, perceptions, lack of insight and judgment were the predominant features. He has been treated with antipsychotic drugs and

ECTS(4) and is under maintenance drugs. Although he has shown good response to treatment, he being only a under trainee, the illness being a

Psychotic type in which relapses are known to occur his retention at this state going to be a liability to state hence recommended to be invalided out of

service in category EEE Psychological.

8. 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 EEE during the training.

9. Thus considering all issues including the fact that this disease being a mental disorder cannot be detected at the time of enrolment and the fact that

it has manifested during the training, we agree with the opinion of the medical board that the disease is NANA being a constitutional disorder and not

connected with service. Additionally a trainee is akin to a probationer and therefore the respondents have every right as an employer to remove a

trainee soldier from training and from service if he is not fully fit to undergo military training and become a good soldier.

10. Apart from it, in identical factual background Co-ordinate Bench of this Tribunal dismissed T.A. No. 1462/2010, Bhartendu Kumar Dwivedi vide

order dated 23.05.2011 wherein the applicant was enrolled on 21.01.2000 and was discharged on 23.05.2000 as he was suffering from Schizophrenia.

Said disability was assessed @ 80% for two years and it was opined by the Medical Board to be neither attributable to nor aggravated by military

service. Said order of this Tribunal has been upheld by Honible Apex Court as Civil Appeal Dy. No. 30684/2017 was dismissed on delay as well as on

merits. Additionally, in Civil Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India & Ors it has again been held by the Hon'ble

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 dearly 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. 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

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

12. No order as to costs.

13. Pending application(s), if any, also stand disposed off.

Pronounced in the open Court on 11th March, 2020.