

SEE RULE 102(1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH

O. A. NO.47/2014

THIS 25TH DAY OF JANUARY, 2016

CORAM

HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S) Ex-CPL Swaraj Kumar Das
Vill. - Patasura,
P.O. – Ibirisingh, P.S.- Tirtol,
Dist.-Jagatsinghpur, State - Odisha
Pin – 754 138.

-versus-

RESPONDENT(S)

1. The Union of India,
represented through Secretary,
Ministry of Defence, South Block
New Delhi, Pin -110 011.
2. Secretary,
Deptt. of Ex-Servicemen Welfare & Pension,
Ministry of Defence, South Block
New Delhi – 110 011.
3. DGAFMS,
Ministry of Defence,
New Delhi – 110 011.
4. PCDA (P), Air Force Cell,
Draupadi Ghat
Allahabad (U.P.)- 211 014.
5. Director-III (DP)
Directorate of Air Veterans,
Air Force Station, Subroto Park,
New Delhi -110 010.
6. Air Officer Commanding (AOC)
Air Force Record Office,
Air Force Station, Subroto Park,
New Delhi -110 010.

For the petitioner(s) : Mr. Bisikesan Pradhan, Advocate

For the respondent(s) : Mr. Anand Bhandari, Advocate

ORDER

PER HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act, 2007 claiming disability pension.

2. Facts of the case in brief are that the applicant, Ex-CPL Swaraj Kumar Das was enrolled in the Indian Air Force on 25 Nov 1982 as an Airman (Radio Fitter). While the applicant was in the posting strength of 12 Wing, Air Force, he was diagnosed as a victim of "Schizophrenia (295)" having onset in October 1986 and consequent upon recommendation of Invalidating Medical Board (IMB) held on 23 Jul 1987, the applicant was invalidated out from Air Force service on 06 Mar 1988 having been found unfit for further service in the Indian Air Force. The Invalidating Medical Board assessed his disability "Schizophrenia" @ 50% for two years and recommended the same as "psychotic illness not connected with service". The applicant's claim for disability pension was rejected vide Memo. No. 7(55)-/90-D(Pen.A) dated April 06, 1990. According to the applicant, after knowing from reliable source that one victim of "Schizophrenia" is getting disability pension after retirement, he collected the copies of his discharge book and Invalid Medical Board proceedings through RTI on 03 Sept 2013. Thereafter, the applicant submitted representation before the AOC, AFRO on 18 Oct 2013 praying for payment of disability pension but the same was rejected vide letter dated 07 Nov 2013 by the Director-III(DP), Directorate

of Air Veterans stating that "Schizophrenia (295)" is neither attributable to nor aggravated by service.

3. By filing affidavit-in-opposition, the respondents submit that the applicant was enrolled in the Indian Air Force on Nov 25, 1982 and discharged from service on Mar 06, 1988 on having being found medically unfit for further service (though fit for civil employment) after rendering a total period of 05 years and 103 days of regular service. The Invalidating Medical Board (IMB) assessed his disability "Schizophrenia" @ 50% for two years and recommended the same as neither attributable to nor aggravated by Air Force service. His appeal against rejection of disability pension was rejected vide Memo No. 7(55)-/90-D(Pen.A) dated April 06, 1990. The applicant never challenged such rejection of his appeal since 1990 till date. The respondents further submit that the applicant was not sanctioned disability pension due to non-fulfilment of primary conditions required for grant of disability pension in accordance with Rule 153 of Pension Regulations for IAF, 1961 (Part I) as IMB recommended his disability ID as neither attributable to nor aggravated by service and accordingly it was rejected vide order dated Nov 07, 2013.

4. We have heard Id. counsel for both sides and perused the records of the case.

5. Payment of pension is governed by Regulation 153 of Pension Regulations for Air Force, 1961 (Part I). As per Regulation 153, the primary conditions for grant of disability pension is "unless otherwise specifically

provided, a disability pension may be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by Military Service and is assessed at 20 per cent or over. According to the respondents, as the applicant's disability has been considered as neither attributable to nor aggravated by the Military Service and also that the disability is not connected to Military Service by the IMB, his claim for grant of disability pension has been rejected.

6. By placing his reliance upon several pronouncements of Hon'ble Apex Court Mr. Bisikesan Pradhan, Id. counsel for the applicant submitted that "Schizophrenia (295)" is an internal disease, ailment due to service condition and most importantly is not constitutional in nature. The applicant was healthy at the time of entry into the service and there was no note in his records to the ID which led the applicant to be invalidated out of service. Nobody either from the paternal side or from the maternal side of the family has ever suffered from such disease. The applicant was subjected to medical check-ups at regular intervals i.e., prior to commencement of training and after training so as to keep the applicant all the times fit for combat duties. Since the applicant was Radio Fitter by trade and used to work in transmitter, in the airfields, these strenuous duties coupled with secondary duties involving the stress and strain of Air Force Service with leave problems resulted in onset ID of "Schizophrenia (295)" in October 1986 i.e., after 04 years of applicant's entry into Air Force Service. It was further submitted that the ID is covered under the diseases, which is affected by stress and strain of Air Force Service as provided in Entry 2 of

Appendix II to the Pension Regulations for the Air Force, 1961 (Part I). Therefore, findings of IMB held on 23.07.1987 are illegal and arbitrary since the Medical Board lost their sight of the provisions contained in Rule 5, 9 and 14 (a) (b) of the Entitlement Rules for Casualty Pensionary Awards, 1982 and Regulation for Medical Officers of the Armed Forces, 1983 and Paras 1 and 3 of Chapter II of the Guide to Medical Officers (Military Pension) , 2002 and, therefore, the applicant is entitled for grant of disability pension @ 50% with rounding off benefit to the tune of 75% with interest and cost.

7. Per contra, Mr. Anand Bhandari, Id. counsel for the respondents reiterated the stand taken in the affidavit-in-opposition and submitted that the applicant is not entitled to disability pension as his disability is neither attributable to nor aggravated by military service and the applicant's claim has been rightly rejected by the authorities.

8. Indisputably, the applicant was enrolled in the Indian Air Force on 25 Nov, 1982 and was discharged from service on 06 Mar, 1988 having been found unfit for further service in the Indian Air Force. As per the report of IMB, the applicant was diagnosed as a victim of "Schizophrenia (295)" having onset in Oct, 1986. At the time of discharge, his disability was found @ 50% which according to the IMB was "psychotic illness ("Schizophrenia (295)") not connected with the service". The only question, therefore, arises with the above backdrop is whether or not the Medical Board's opinion in itself is sufficient to deny the applicant's claim for disability pension.

9. Before adverting to the facts of the case it would be appropriate to refer Pension Regulations that govern the field. Regulation 153 reads :-

“153. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by Military Service and is assessed at 20 per cent or over.

The question whether a disability is attributable to or aggravated by Air Force service shall be determined as per Entitlement Rule as mentioned in Appendix II.”

Rule 7 and 8 which are relevant for deciding the matter are reproduced here-in-below :-

“ 7. In respect of diseases, the following rules will be observed :-

(a) Cases, in which it is established that conditions of Air Force Service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for Air Force Service. However, if medical opinion holds for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service.

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of Air Force Service determined or contributed to the onset of this disease and that the conditions are due to the circumstances of duty in Air Force Service.

(d) In considering whether a particular disease is due to Air Force Service, it is necessary to relate the established fact in the a etiology of the diseases and of its normal development, to the effect that conditions of service e.g., exposure, stress, climate, etc. may have had on its manifestation. Regard must also be had to be time factor.

(i) Common diseases known to affected by exposure to weather – Diseases such as Bronchitis, Rheumatism and Nephritis indeed most diseases of the respiratory system, joints and kidneys are affected by climatic conditions. The period and the conditions of service at any particular place should be taken into account in determining casual connection with service.

(ii) Common diseases known to be affected by stress and strains. This should be decided with due reference to the nature of duties and individual has had to perform in Air Force Service. It may be that in some cases the individual had been engaged on sedentary duties, when they will normally not qualify,

(iii) Diseases endemic to certain areas – Diseases such as malaria, kalazar, Filariasis, Dysentery, Cholera, etc., are endemic in certain areas. These diseases may also be introduced by movements of infected persons. In determining casual connection with service it will have to be established that the conditions of Air Force Service exposed the individual to the infection as a result of which he contracted the disease. Where there is medical evidence of the contraction of the diseases either prior to entry in the service, or while on duty or on leave

or desertion or unauthorized absence, etc. attributability should not be accepted unless the disease occurs within the incubation period.

(iv) *Diseases due to infection in service – Entitlement to pension will be admitted if the exposure to infection arose from the circumstances of the member's service.*

(v) *Diseases known to be affected by dietary compulsion – The compulsion of service would also be covered such cases as gastric disorders e.g. gastritis, gastric and duodenal ulcers, where it is established that the member was unable to follow a dietary regime required for his condition. The effect of service in such cases will be limited essentially to the question of aggravation of a pre-existing constitutional condition. This will not normally apply to individual's in sedentary occupation.*

(vi) *Diseases which run their course independently of external circumstances - There are certain diseases which would have run the same course whether the individual had been in the forces or not, e.g., Leukemia, Hodgkin's disease etc. Such cases will be accepted as aggravated by service unless it is clear that owing to exigencies of service the man did not receive treatment of a satisfactory character and standard or such treatment was so delayed as to be less effective than it should have been.*

(vii) *Venereal diseases –*

(1) *Venereal disease will normally be rejected but a sequel of the disease may sometimes be accepted as aggravated by service. In the case of such disease contracted during service, grounds for acceptance will rarely be found unless the member after treatment had returned to full duty and had been subjected to such straining as would produce one of the after effects of the disease sooner than would be normally been the case. The straining must have been exceptional nature.*

(2) *In the case of disease contracted before service, if the member had reached an age when such a manifestation could be accepted, entitlement will not be conceded. On the other hand, if the later manifestation had been produced or hastened by the strain of service in which case there should be evidence that the strain caused of an exceptional nature, entitlement may be considered on the basis of aggravation.*

(3) *In the case of disease due to heredity, entitlement must be determined as in paragraph (2); above.*

(4) *The above refers only to late manifestation of sequel of venereal disease as Neuro – Syphilis or cardio vascular syphilis.*

(viii) *Invalidation on account of indulgence in drugs or drinks – Entitlement shall not be conceded if the disability or death on which the claim is based, resulted from indulgence in drugs or drinks which is within one's own control.*

8. *Unforeseen effects of service medical treatment –*

(a) *Where, unforeseen complication arise as a result of treatment (including operative treatment) given for the purpose of rendering a member fit for service duties, any disablement resulting will not normally be accepted as attributable to service.*

(b) *Where the treatment is given for other reasons, the position regarding any unforeseen complications differs according to the condition which necessitated treatment was not, either attributable to or aggravated by service. If it was so attributable or aggravated, any disablement resulting from the treatment will*

normally be accepted as attributable to service. If it was not, no responsibility will be accepted for the additional disablement unless neglect, delay, faulty technique or lack of reasonable skill can be held responsible for the untoward outcome or the exigencies of service before, during or after the treatment can be held to have caused or aggravated the condition.

(c) The above consideration applies whether the treatment is given in a service hospital or under service arrangement in any other hospital, but will not apply if the treatment is undertaken under private arrangement by an individual. ”

10. It is not in dispute that the applicant had completed the prescribed basic training and technical training satisfactorily and had been posted as an Airman (Radio Fitter) where it was for the first time noticed in October, 1986 that he was suffering from the disease i.e. “Schizophrenia (295)”. The IMB simply opined that the aforesaid disease is not connected with the service. The opinion was not supported by any reason. The IMB also did not record any reason for holding that the disease which the applicant was suffering from was not attributable to or aggravated by military service. We have in fact a situation in which a person is recruited after being found physically fit in all respects and who completes his training successfully but is subsequently thereto found to have contracted an invaliding disease. The question is whether the disease and consequent disability can be said to have arisen out of military service. As per Para 7 (b) of the Entitlement Rules, a disease which had led to an individual’s discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual’s acceptance in Air Force Service which is admittedly absent in the instant case. Considering similar, though not identical Pension Regulations for Army, the Hon’ble Apex Court in the case of **Dharamvir Singh vs. Union of India** (2013 Vol.13 SCC 216) has observed as under :-

“ The onus of proof is not on the claimant (employee), the corollary is that the onus of proof that the conditions for non-entitlement is with the employer. The claimant has right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally.”

11. The Hon’ble Apex Court in a similar case – **Union of India Vs. Rajbir Singh** – Civil Appeal No. 2904 of 2011 etc., decided on 13.02.2015 after considering **Dharamvir Singh** (Supra) and upholding the decision of the Tribunal granting disability pension to the claimants observed : -

“.... The essence of the rules, as seen earlier, is that a member of the Armed Forces is presumed to be in a sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made t the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground, his entitlement to claim disability pension will arise, unless of course, the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service.....

.....Last but not the least is the fact that the provision of payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces.....

.....There may be indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service. The burden to establish such a disconnect would lie heavily upon the employer or otherwise the rules raise a presumption that the deterioration in the health of the member of the service is on account of military service or aggravated by it. A soldier cannot be asked to prove that the disease was contracted by him on account of military service or was aggravated by the same.

12. It is pertinent to mention here that in **Union of India Vs. Rajbir Singh’s** case the Hon’ble Apex Court was also dealing with the employees who were suffering from Generalized Seizures and Schizophrenia. Thus,

while upholding that the applicants who were suffering from such diseases which was attributable to and aggravated by military service, the Hon'ble Apex Court also affirmed that "Schizophrenia" is also attributable to Military Service and is not simply a constitutional disease. The same view has been reiterated by the Hon'ble Apex Court in the case of **K. Srinivasa Reddy Vs. Union of India (MJ 2014 SC 20)**.

13. This Bench has also occasion to deal with the identical issue i.e., the employee suffering from "Schizophrenia" and after considering the principles of law, various pronouncement of Hon'ble Apex Court and various definitions of "Schizophrenia" it has been held by this Bench in the case of **Brajlal Paul Vs. Union of India** in O. A. No. 67 of 2013 decided on 08.07.2015 that "Schizophrenia (295)" is a disease which is attributable to Military Service.

14. Again coming to the facts of the case it cannot be said that due to stress and strain of the job the applicant cannot be a victim of "Schizophrenia" especially in a case where psychiatric disorders may occur to an Armed Forces personnel due to stress and strain of his job as per Guide to Medical Officers Pension, 2008. Therefore, in our opinion, the IMB has very casually held that the applicant's disease is not connected with the service without dealing with the subject in detail and without giving reasons thereof. So, the above observation of the IMB on the face is illegal and void.

15. In view of the foregoing, the O. A. deserves to be and is hereby allowed. It is held that the applicant is entitled to 50% disability pension which is to be rounded off from 50% to 75% according to the Government decision dated 31.01.2001. The petitioner is also entitled to arrears for the past three years along with interest @ 12% per annum. Order be implemented within three months from the date of receipt of the order. No order as to costs.

16. A plain copy of the order, duly countersigned by the Tribunal Officer, be furnished to both sides after observance of usual formalities.

(Lt Gen Gautam Moorthy)
Member (Administrative)

(Justice N.K. Agarwal)
Member (Judicial)