

FORM NO – 21
(See Rule 102 (1))

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION NO: O.A. 10 OF 2011

THIS 25TH DAY OF APRIL, 2013

CORAM : Hon'ble Mr. Justice Raghunath Ray, Member (Judicial)
Hon'ble Lt. Gen. K.P.D.Samanta, Member (Administrative)

Army No. 15490653A Ex Rect Pramod Kumar Armoured Corps
Resident of village Baghmandawa, PO Gurpa, PS Fatehpur, Dist.
Gaya (Bihar) Posted at B.T.R. Ahmadnagar (Maharashtra)

..... Applicant

Versus –

1. Union of India through the
Defence Secretary, Army HQ
Defence HQ, New Delhi.
2. The Chief of the Army Staff, Army HQ,
Defence HQ, New Delhi.
3. The Record Officer, Kavachit Corps Abhilekh,
Armoured Corps Records, Ahmednagar (Maharashtra)
4. The Officer-in-Charge, PCDA (P) Allahabad (UP)
5. The Director, Army Group Insurance,
R.K.Puram, New Delhi.

.....Respondents

For the applicant : Mr. Mahesh Prasad, Advocate

For the respondents : Mr. Mintu Kumar Goswami, Advocate

O R D E R**Per Hon'ble Lt. Gen. K. P. D. Samanta, Member (A) :**

In this O.A. filed under section 14 of the Armed Forces Tribunal Act, 2007, the applicant has mainly prayed for grant of disability pension and other benefits like Ex-gratia, Army Group Insurance etc.

2. The case of the applicant, in brief, is that he was enrolled in the Armoured Corps of Indian Army on 4.7.2003 and was discharged from service on 28.12.2003 having being placed in low medical category due to schizophrenic disorder. However, he was not granted any disability pension although, according to him, his such disability was caused due to stress and strain of army service. It is his case that even though the percentage of disability was assessed above 20%, the benefit of disability was denied on the ground that cause of his such disease was neither attributable nor aggravated by military service. He made an appeal on 30.4.07 which was rejected by order dt. 18.11.2009. Being aggrieved, he preferred a second appeal on 10.12.2009 but the same was also rejected on 2.8.2010.

3. According to the applicant, the authorities cannot deny him disability pension as the cause of his disease was due to stress and strain of military service. His contention is that while he was initially medically examined during enrolment, there was no indication of such disease and no such entry was also made by the medical authorities and therefore, it has to be reasonably presumed that his disease had developed due to the military service and under such circumstances, he cannot be denied disability pension including rounding off benefit from the date of his discharge. He has also claimed AGI benefit which, it is alleged, was also not paid to him. He has also prayed for payment ex gratia amount as admissible under the rules.

4. The applicant has placed reliance on the decision of the Hon'ble Supreme Court in the case of **UOI –vs- Bashirbhai R Khiliji** reported in AIR 2007 SC 1935 as also the case of **L.D Baij Nath Prasad –vs- UOI** as decided by the Hon'ble Patna High Court in CWJC 10752/2004. However, no copy of this judgement has been produced before us.

5. Basing his claim on the above facts and points of law, the applicant has prayed for the following reliefs :

- i) The rounding of disability pension wef 29.12.2003 and the amount of its arrear till the date of payment.
- ii) The amount of Army Group Insurance due to disability because he has been discharged from service without completion of service and he has not been discharged at his own request.
- iii) The amount of retaining fee wef 20.12.2003 to 29.12.2006 as per Defence Service Regulation 1987
- iv) The amount of Ex gratia as directed by the Hon'ble Supreme Court in the case of the Union of India –vs- Bashirbhai R Khiliji.

6. The respondent Nos. 1 to 4 as also respondent No. 5 (AGIF authorities) have contested the claim of the applicant by filing separate reply affidavits in which they have denied all the allegations as made by the applicant in his original application.

7. Respondents 1 to 4 in their counter affidavit have submitted that the applicant was enrolled in the Army on 4.7.2003 and was discharged from service on 27.12.2003 having been invalidated out of service by an Invalidating Medical Board which was approved by ADH, HQ, Southern Command, Pune on 20.12.2003 under rule 13(3)III(IV) of Army Rules, 1954 after rendering only about 5 months service. It is further stated that the

applicant was admitted in the Command Hospital, Pune on 27.8.2003 having been diagnosed as a case of “*Acute Schizophrenia Like Phychotic Disorder*” and was discharged on 27.12.2003. He was rendered proper medical care during the period he was in hospital. But since there was no improvement in his condition, the Invalidating Medical Board, which was held on 25.11.2003 at Command Hospital, Pune, it was decided that the applicant was unfit to be retained in service being in low medical category of S₅H₁A₁P₁E₁ which was approved by higher authority. The disability of the applicant was regarded as neither attributable nor aggravated by military service and the degree of disability was assessed at less than 20% being 15-19% for life. Accordingly, his disability pension claim was turned down by the PCDA(P) as per rules holding that his disability was constitutional in nature. His appeal which was submitted two years after the rejection of his claim, was also considered but the same was rejected. His second appeal was also considered and rejected by the competent authority. It is further submitted that the applicant has been paid his dues viz. Invalid Gratuity, DCRG, arrears of credit balance and AGI fund as admissible. It is, therefore, claimed by the answering respondents that there is no merit in the claim of the applicant which should be rejected.

8. Respondent No. 5 has filed a separate reply in which also they have submitted that the applicant's degree of disability being less than 20%, he is not entitled to any benefit as claimed.

9. We have heard Mr. Mahesh Prasad, Id. adv. for the applicant and Mr. Mintu Kumar Goswami, Id. adv. appearing for all the respondents including respondent No. 5.

10. From the facts stated above, it is seen that the applicant was invalidated out of service within a few months of his joining the training course as a recruit, as he was

placed in low medical category for suffering from *Acute Schizophrenia Like Phychotic Disorder*. The medical board which examined him found that the disease with which the applicant was suffering was not attributable to nor aggravated due to military service and in fact, it was constitutional in nature. His degree of disability was assessed at less than 20% being 15-19% for life.

11. Grant of disability pension to an individual who is discharged being in low medical category is governed by Reg. 173 of the Pension Regulations. It will be useful to quote the said regulation below :-

“173. – Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over. ..”

12. Thus, it appears that two conditions have to be fulfilled for grant of disability pension. First, the disability has caused or aggravated due to military service and secondly, the degree of disability must be above 20%/

13. Although the applicant in his application has claimed that his degree of disability was more than 20%, but at the time of hearing, Mr. Mahesh Prasad, Id. adv. for the applicant admitted, on perusal of the original medical board proceedings, that in fact, it was less than 20%.

14. So far as the other condition is concerned, the contention of Mr. Prasad is that due to the stress and strain of training, such disease was developed in the applicant and, therefore, it has to be presumed that the disease has caused due to military service.

15. However, from the opinion the Medical Board, as annexed by the respondents along with the counter affidavit at page 19, we find that the Invalidating Medical Board has inter alia opined as follows :-

“.....There is past history of similar episode which was limiting last year. There was no h/o substance abuse. History of genetic loading of psychiatric illness in mother present.

He responded quickly and adequately to antipsychotics and other supportive measures. Presently he is euthymic with no active psychotic features and has stable biodrives.

In view of the psychotic nature of his illness which is incompatible with recruit training, he is recommended to be invalidated out of service in Psychiatric category S5, in interest of the individual and the organization. “

16. It is clear from the above opinion that there was history of such disease in the applicant in the past and that his mother has also similar disease and the disease in the applicant may be genetic in origin. In that view of the matter, the medical board held that his disease was not attributable to or aggravated by military service and that it was constitutional in nature.

17. Mr. Mintu Kr. Goswami, Id. advocate for the respondents relying on the decision of the Hon'ble Supreme Court in the case of **Ministry of Defence & Ors –vs- A.V.Damodaran**, (2009) 9 SCC 140, has emphatically submitted that opinion of the medical board has to be given due importance and court or tribunal cannot interfere with the same unless there is apparent flaws in such opinion.

18. We are inclined to accept the contention of Mr. Goswami and we are also of the opinion that in view of clear finding of the medical board, it has to be accepted that the disease with which the applicant was suffering was constitutional in nature and was not attributable to or aggravated by military service, as claimed.

19. Mr. Mahesh Prasad has, however, relied on some decisions to argue that the applicant cannot be denied ex gratia payment. For the purpose he has placed reliance on the decision of Hon'ble Supreme Court in the case of **Union of India & Anr –vs- Bashirbhai R. Khilji**, AIR 2007 SC 1935. In that case, we find that the appellants were employed in CRPF and were governed by CCS(Pension) Rules in terms of rule 42 of CRPF Rules, 1955. In the instant case, the applicant is governed by Army Act and Army Rules as well as Army Pension Regulations which are totally different. Therefore, the said decision is of no avail to the applicant.

Mr. Prasad has also relied on the decision of the Andhra Pradesh High Court in the case of **M.Srinivas –vs- APSRTC**, 2012 Lab IC 4082. In that case the Hon'ble High Court relying on the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, held that the petitioner was entitled to alternative job after having been retired on medical ground. The fact of the instant case is clearly distinguishable and hence the said decision is not applicable.

Mr. Prasad has then referred to a decision of this Tribunal dt. 16.12.2011 in TA 74 of 2011 (**Rect. Shiv Kumar Singh –vs- UOI & Ors**). In that case, the applicant was medically boarded out and the medical board held his disability was due to military service and the degree of disability was assessed above 20%. His case was recommended for grant of disability pension but the PCDA(P) overruled it. The Tribunal held that the PCDA(P) has no such authority to supersede the opinion of the medical board. This was also the view of the Hon'ble Apex Court as enunciated in umpteen number of cases. In the instant case, the applicant's disability was below 20% and his case was not recommended by the medical board. Therefore, facts are clearly distinguishable.

20. For the reasons stated above, we are of the clear opinion that the applicant has not been able to make out a case for grant of disability pension in his favour. We do not find any infirmity in the decision of the medical board and hence, the applicant has been rightly held to be not entitled to any disability pension. He has, however, been paid certain amount towards invalid gratuity and Army Group Insurance which has not been denied by the applicant.

21. In view of the foregoing, we find no merit in this case which is accordingly dismissed on contest but without any cost.

22. Let the original record be returned to the respondents on proper receipt.

23. Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both sides on observance of usual procedure.

(LT. GEN. K.P.D.SAMANTA)
ADMINISTRATIVE MEMBER

(JUSTICE R.N.RAY)
JUDICIAL MEMBER