

(20) 06 AFT CK 0015

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 367 Of 2018

Avadhesh Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 17, 0020**Hon'ble Judges:** Sunita Gupta, J; B.B.P. Sinha, Member (A)**Bench:** Division Bench**Advocate:** V.S. Kadian, V.S. Tomar**Final Decision:** Dismissed

Judgement

1. Aggrieved by the denial of disability pension, the applicant has find the instant O.A seeking the following relifs:

(a) Quash and set aside the impugned letter No Air HQ/99798/1/283316/DAV/DP/CC dated 29.03.2017.

And/or

(b) Direct the respondent to treat the disability of the applicant as attributable to or aggravated by military service and to grant him disability element of pension with benefits of rounding off/broad banding of the disability element.
And/or

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

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

favour of the applicant and against the respondents.

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 31.12.2014 and

was invalided out of service w.e.f. 13.02.2016 after rendering 1 year and 1 month of service in low medical category on account of disability

MODERATE DEPRESSIVE EPISODE"". His Invaliding Medical Board (IMB) was held at MH Chennai on 07.12.2015. The duly constituted

Invaliding Medical Board had viewed his disability ""MODERATE DEPRESSIVE EPISODE"" as Neither Attributable to Nor Aggravated (NANA) by

military service being an idiopathic condition and assessed the disability @ 40% for life. Accordingly, the disability pension claim of the applicant was

rejected by Air HQ, Directorate of Air Veterans, New Delhi vide order 29.12.2017, denying the disability pension. Hence the O.A. 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 @ 40% and the same is to be

rounded off to 50% for life.

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

EPISODE"" has been opined by the board as Neither Attributable to Nor Aggravated by military service (NANA) being an idiopathic condition and not

connected with service. The learned counsel for the respondents submitted 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 on 31.12.2014. He was reported sick at AF

7. The applicant was examined by the Specialists. The opinion of Lt Col M Diwakar, Classified Specialist (Psychiatry) at MH Secunderabad dated

12.11.2015 is as under :-

Physical examination was essentially normal. Initial Mental State Examination revealed psychomotor retardation. Poor rapport and eye contact, low

tone speech with reduced spontaneity, depressed mood and affect, goal directed thinking, depressive cognitions of anhedonia, pessimism, helplessness, low self confidence and suicidal ideas in clear sensorium. There were no delusions of perceptual disturbances, appetite energy and sleep were reduced. He was diagnosed and managed as a case of Moderate Depressive Episode with antidepressants, supportive psychotherapy. CBT and other supportive measures, to which he responded satisfactorily. Presently he is stable on medication.

In view of major depressive break down during the period of training, he is recommended to be invalided out of service in low medical category ApGp in accordance with DGAFMS medical memorandum 171 Para 9 a (vi).

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 low medical category ApGp during the training.

9. Thus considering all issues and the fact that this disease has manifested in less than 08 month of enrolment and during the training, we agree with the opinion of the medical board that the disease is NANA, 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. 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/s clearly 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

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

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 17th June 2020.