

**(20) 06 AFT CK 0019**

**Armed Forces Tribunal Principal Bench, New Delhi**

**Case No:** Original Application No. 1218 Of 2016

Pramod Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision:** June 19, 0020

**Acts Referred:**

- Pension Regulations For The Army, 1961 - Regulation 173

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

**Bench:** Division Bench

**Advocate:** V.S. Kadian, J. S. Rawat

**Final Decision:** Dismissed

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### **Judgement**

1. Being aggrieved by denial of disability pension, the applicant has filed the present Original Application under Section 14 of the Armed Forces

Tribunal Act, 2007 wherein he has sought the following reliefs:-

(a) Direct the respondents to quash and set aside the impugned letter No B/40502/1084/2014/AG/PS-4 (Imp-11) dated 06.08.2015 and grant disability

pension and rounding off/broad banding benefits to the applicant wef 04.09.2013 and/or,

(b) Direct respondent to pay the dues arrears with interest @ 12% p.a. alongwith the consequential benefits.

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

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 19.03.2012 and was invalided out of service w.e.f. 03.09.2013 in

low medical category 1S1H1A1P5E1' due to 'Multiple Cavernous Angiomas Brain' having rendered only one year and five months of service. The

IMB of the applicant was held on 08.07.2013 at Military Hospital, Bhopal which had assessed his disability @ 20% for five years neither attributable

to nor aggravated by military service (NANA). Disability pension claim and first appeal of the applicant were rejected vide orders dated 13.10.2014

and 06.08.2015 respectively. It is in this perspective that this O.A. has been filed.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Army in medically and physically fit condition. It was further pleaded

that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at the time

of entry. In the event of his subsequently being invalided out from service on medical grounds, any deterioration in his health is to be presumed due to

service conditions. He pleaded that the applicant was under stress and strains due to rigors of service conditions which may have led to occurrence of

the disability. Relying upon Hon'ble Apex Court judgment in the case of Union of India & Ors vs Manjit Singh, AIR 2015 SC 2114, Union of India &

Ors vs Angad Singh Titaria, AIR 2015 SC 1898 and CA No 11208, WP (C) No 4564/2013 Sunil O A No 12111201d Red Pramod Kumar Kumar

Sharma vs Union of India & Ors decided on 12.11.2014 and Hon'ble Tribunal judgment in O.A. No 90 of 2014, Ex AC (UT) Naresh Kumar Rana vs

Union of India & Ors, the Ld. Counsel pleaded that since the aforementioned cases are symmetrical to the present case, hence the applicant is

entitled to be granted disability pension as he had put in one year and five months service at the time of invalidation.

4. On the other hand, Ld. Counsel for the respondents submitted that since the IMB has opined the disability as NANA being present by birth, the

applicant is not entitled to disability pension. He further accentuated that the applicant is not entitled to disability pension in terms of Rule 173 of

Pensions Regulations for the Army 1961 (Part-I) which stipulates that, ""unless otherwise specifically provided, a disability pension may be granted to

an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service and is assessed at 20%

or over but in the instant case the disability of the applicant has been assessed at 20% for five years and NANA, therefore the applicant is not entitled to disability pension. He pleaded the O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. On careful perusal of the Invalid Medical Board (IMB) documents, it has been observed that the disease 'Multiple Cavernous Angiomas Brain' has

been opined by the IMB as 'being CONGENITAL IN NATURE (from birth)'. The Medical Literature describes this disease as 'Cerebral Cavernous

Malformations (CCMs)' are abnormally formed blood vessels. As opposed to other kinds of hemangiomas, CCM vessels, which have the appearance

of a small mulberry, develop and create problems in the brain or spinal cord. These malformations, which can vary in size from 2 millimetres to several

centimetres in diameter, may be hereditary but most often occur on their own. Thus in this situation when the Medical Literature is clear that this

disease is by birth we have noted that the applicant was enrolled on 19.03.2012 and the disease had first started, on 10.11.2012 (while undergoing

basic military training) i.e. within 07 months of joining the service. He was administered regular treatment at Military Hospital, Bhopal and Command

Hospital (Southern Command) Pune as per required medical protocol till the date of invalidation out of service.

7. In the above scenario, we are of the opinion that since the disease is congenital (by birth) it is not likely to be detected at the time of enrolment.

Additionally, it has started in less than 08 months of his enrolment, hence by no stretch of imagination, it can be concluded that it has been caused by

stress and strain of military service. Additionally, a recruit is akin to a probationer and hence prima facie the respondents as an employer have every

right to discharge a recruit who is not meeting the medical requirement of military service and is not likely to become a good soldier. In view of the

foregoing and the fact that the disease manifested in less than 08 months of enrolment, we are in agreement with the opinion of IMB that the disease

is congenital in nature and hence NANA. Apart from, in similar case in Civil Appeal No 7672 of 2019 in Ex CM Narsingh Yadav vs Union of India &

Ors it has again been held by the Hon'ble Supreme Court that all 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:-

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.

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

No order as to costs.

Pending applications, if any, are disposed of accordingly.

Pronounced in the open court on 19 March, 2020