



2024:DHC:9106-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 14.11.2024
Pronounced on: 26.11.2024

+ W.P.(C) 13577/2024

NO 40634Z LT A K THAPA (RELEASED)Petitioner
Through: Ms. Meenakshi Devgan, Mr.
Anand S. Jha, Mr. A. Tiwari,
Adv.

Versus

UNION OF INDIA & ORS.Respondents
Through: Mr. Piyush Gupta, CGSC with
Mr. Prateek Gupta, Mr. Amit
Sharma, Adv. for UOI.
Ms. Priya Singh, Adv. for UOI.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. By way of the present petition under Article 226 of the Constitution of India, the petitioner assails the Order dated 07.07.2023 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (in short 'AFT') in Original Application (in short 'OA') No. 2240 of 2019 titled *Lt A K Thappa vs. Union of India and Ors*, to the extent of the non-grant of disability element of pension, holding that the disability is neither attributable to nor aggravated by military service (NANA). However, the invalid pension was granted by the learned AFT.



2. The brief facts of the case are that the petitioner was commissioned into the Indian Navy on 01.01.1977 and after rendering 5 years and 11 months and 19 days of service, was subsequently discharged / invalidated out from service on 20.12.1982, on account of the Invaliding Medical Board (IMB), held in 1982, finding the petitioner 'unfit' for Navy service.

3. It is the case of the petitioner that during the year 1981, while on board the submarine INS Vagsheer, he was diagnosed with Epilepsy. He submitted that he was commissioned into the Indian Navy in a medically fit condition and in case he suffered from Epilepsy attacks, the same could not deteriorate to such a stage that within a service period of 5 years he had to be discharged from service.

4. The petitioner claimed that the proceedings of the IMB and other medical documents were not provided to the petitioner. The petitioner claimed that he was released from service only with one certificate which showed him as invalidated from service as being medically 'unfit' for Navy service.

5. Aggrieved by his invalidation, the petitioner filed the above-said OA before the learned AFT, claiming the grant of disability element of pension @ 50% for life from the date of his invalidation from service, which was disposed *vide* the impugned Order dated 07.07.2023, granting the petitioner only invalid pension

6. Dissatisfied by the non-grant of disability element of pension, the petitioner has preferred the present petition before this Court invoking the writ jurisdiction.



Submissions on behalf of the parties

7. Alluding to the discrepancies in the Impugned Order, Ms. Meenakshi Devgan, the learned counsel for the petitioner submitted that the petitioner was denied the relevant medical documents *vide* letter dated 16.05.2019 and a destruction a destruction certificate was forwarded by the IHQ of MOD (Navy), in relation to the medical documents of the petitioner *vide* letter dated 14.10.2019. The petitioner claimed that in the said medical documents, he had been shown in the medical category A1S1, however, he could not have been invalidated out in the said medical category. The learned counsel submitted that the learned AFT failed to consider that the petitioner was medically 'fit' when he was inducted into the Indian Navy, and had the petitioner been 'unfit' for Naval Services, he would not have been commissioned initially. She submitted that after over 5 years of successful service in the Navy, the petitioner started suffering from Convulsion and he was invalidated out of service on the basis of only one medical certificate, which is not only unreasonable but also unjustified.

8. She submitted that the learned AFT failed to consider the established law laid down by the Supreme Court in a catena of judgments, where it has been clearly held that when a service member enters a Force in a 'fit' medical condition and is subsequently discharged with a disability, such disability, except in very specific and narrow circumstances, shall be considered attributable to or aggravated by military service.



9. She highlighted that the conditions for grant of disability pension are provided in Paragraph 48 of the Pension Regulations for the Army, 1961, which states that a disability pension consisting of service element and disability element could be granted to an officer invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty cases and is assessed at 20% or more. Further, in accordance with Government of India, Ministry of Defence letter no. 1(2)/97/1/D(Pen-C) dated 31.01.2001, the petitioner is entitled to the benefit of rounding off with respect to any disability up to 20% is to be rounded off to 50%.

10. She submitted that the petitioner was out on sea most of the time and was deployed in various submarines, thus, the petitioner's disability is attributable to and aggravated by the Naval Service. The learned counsel referred to the Guide to Medical Officers, 2002, and submitted that in case of an Epilepsy attack having taken place while serving in a prolonged afloat service, deep-sea diving, or service in a submarine, it would be attributable to and aggravated by service.

11. The learned counsel further submitted that the non-grant of disability pension to the petitioner is violative of Rule 9 of the Entitlement Rules for Casualty and Pensionary Award, 1982 (The Entitlement Rules) under which the petitioner is entitled to a liberal grant of benefit in afloat service cases. Additionally, the petitioner is also entitled to the benefit of presumption under Rule 5 of the Entitlement Rules, which mandates that in case a member of the Force is found fit at the time of enrollment, and in the event of



his/her subsequent discharge from service on account of any deterioration in health, the presumption would be that same is due to his service.

12. Learned counsel for the petitioner by referring to Rule 19 of the Entitlement Rules contended that even if the disability existed prior to military service, any worsening of the condition due to the individual's service in the Force has to be accepted as being aggravated by military service. Therefore, the petitioner would be entitled to the disability pension, regardless of whether he had any infirmity at the time of his commissioning.

13. To the contrary, while seeking dismissal of the writ petition, the learned counsel for the respondents submitted that the respondents had filed a counter affidavit before the learned AFT, specifically mentioning that the medical category of petitioner was endorsed as S5A5 by the medical board held in November, 1982 and therefore, the petitioner was rightly invalided in terms of the policy decision in the abovementioned Low Medical Category. He submitted that as the petitioner was discharged on 20.12.1982, and in terms of the then existing policy for weeding out of medical documents for naval personnel, the petitioner's medical record had been destroyed in the year 1994, after having retained the same for more than 10 years. Therefore, the same could not be made available to the petitioner.

14. The learned counsel further submitted that the learned AFT has correctly endorsed the stand of the respondents that the



petitioner's disability as assessed being NANA @ 6-10% of disablement, his case did not meet the requisite conditions for grant of disability element of pension. Moreover, the percentage of disability was also less than 20%, therefore, there was no scope for it to be rounded off to 50%.

15. The learned counsel pointed out that the initial medical examination of the petitioner, at the time of induction in the service, may not have detected his medical condition of Epilepsy, since some dormant diseases and hereditary diseases may surface later in life, which have no causal connection with the service condition. The Epilepsy disease is known to occur periodically and it is possible that the detection of the said disease, in case of the petitioner, may have escaped detection at the time of his being commissioned in the service, as it may have been dormant at that stage.

16. He submitted that in order to avail the disability element of pension, the petitioner has to establish a causal connection between the disability and military service.

17. To conclude, the learned counsel submitted that the Force personnel, who are invalidated out of service with less than 10 year of service, are only entitled to avail invalid pension and not disability pension, which has been rightly denied in the case of petitioner.

Findings & Analysis

18. We have considered the submissions of the learned counsel for the parties and perused the record. This Court notes that principal issue which arises for consideration is whether the petitioner is entitled to the claim of the Disability element of the pension.



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19. Before opining on the contentions of the parties, it may be apposite to note that while determining the issues relating to the disability of a Force personnel, the scope of Judicial Review to question the correctness of the opinion rendered by Medical Boards is rather limited. Such Boards are expert bodies, which are expected to provide a categorical opinion after evaluating all the relevant factors. The Court must rely on the expert's opinion in the Medical Board report, as the Court lacks the necessary medical expertise to assess and evaluate the medical aspects of the case; unless it can be shown that the opinion of the Medical Board is clearly illegal, biased, or influenced by extraneous considerations, or had ignored some relevant considerations, or is otherwise arbitrary, or devoid of reasons. These exceptions are only illustrative and not exhaustive.

20. In this background, we may further note that the medical documents of the petitioner have already been weeded out as per the policy decision, which fact had been conveyed to the petitioner in response to an application filed by him under Right to Information (RTI) Act, 2005 on 23.07.2019. It is not disputed that the petitioner had approached the learned AFT after a period of around 35 years to seek the disability element of pension. Thus, respondents cannot be faulted for having weeded out the old record and the medical documents of the petitioner due to long passage of time and in accordance with their policy.

21. The learned AFT *vide* the Impugned Decision dated 07.07.2023 has, on appreciating the oral contentions of the parties, observed as under: -



“15. (a) *Attributability to and Aggravation by Military Service*

... .. It is essential to observe that the records produced by the respondents themselves i.e. copy of the Retired Officer Medical Documents Destruction Register wef May, 1979 for MED III/MRS produced by the respondents in relation to the applicant with service no. 406342 in the rank of LT in the name of applicant A.K. Thapa categorically indicates that the applicant was invalidated out with medical category S5A5 pursuant to the RMB held in November 1982. The copy of the Medical Board Proceedings Invalidating All Ranks in relation to the applicant shows that the applicant had been inducted into the Engineering trade of the Indian Navy and that he had three postings. The certificate dated 01.01.1983 submitted by the applicant as Annexure A-2 issued by the Civilian Staff Officer, Asstt Director of Personnel for Chief of the Naval Staff with the details of the Ships/Establishments where the applicant served has already been adverted to elsewhere in Para-2 herein above. The opinion as on 02.08.1982 of the Lt Col. A.S. Narayanan Swamy Classified Specialist in Neurology and Medicine annexed to the IMB in the case states therein that:

- The disability of the applicant was Generalised Epilepsy; that he aged 27 years; that he had a service tenure of 5½ years, that the applicant was admitted in the neurological centre during January/ February 82 and was investigated for Epilepsy;
- That he got fits during sleep; that he had sudden attacks, and had spasms of all limbs;
- That he remained unconscious for 10 minutes;
- That he had Post-ictoly, gets headaches which last for 4-5 hours; that he had number of fits since April 1976;
- That in addition to fits, he also got severe throbbing generalised Headache which lasted for 4-5 hours;
- That he sustained injury during childhood whilst playing and had been unconscious for some time;
- And there was no family history of Epilepsy;
- that he was Afebrile, pulse Respiration. BP Carotids were normal;
- there were no Subcutaneous nodules on lymphadenopathy;
- that he was suffering from Right temporal lobe epilepsy;
- that as per the clinical impression in this opinion of the Classified Specialist of Neurology and Medicine, the applicant was a case of generalised epilepsy probably Right Temporal Lobe, the Epilepsy becoming generalised but there was no secondary cause for the epilepsy found, and that he had started having seizures during the early part of his career, that he was recommended to be invalidated out of service, he was advised not to go near fire, water or to heights and not to consume alcohol and not to drive a vehicle, his therapy was to continue for four years and that his further treatment would be decided later.

16. The opinion of the Medical Board in Part-III was to the effect:-

"2.(a) In respect of each disability the Medical Board on the evidence before it will express its views as to whether:-

- (i) It is attributable to service during peace or under field service conditions;
- or
- (ii) It has been aggravated thereby and remains so; or
- (iii) It is not connected with service.

The board should state fully the reasons in regard to each disability on which its opinion is based.



Disability	A	B	C
RT Temporal Lobe Epilepsy ICD-345	No	No	Not Connected

The Board further stated therein as under:-

"(d) In the case of a disability under C, the board should stay clearly in their opinion, what is the cause thereof.- Constitutional Disorder"

17. The percentage of disablement was put forth by the Board as under:-

6. What is present degree of disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows) 1.5%, 6-10%,11-14%,15-19% and thereafter in multiples of ten from 20% to 100%.			
Disability (as numbered in question I, part II)	Percentage of disablement	Probable duration of this degree of disablement	Composite assessment (all disabilities)
RT Temporal Lobe Epilepsy ICD-345	(6-10%) less than twenty percent	Two years wef 07/10/82	(6-10%) less than twenty percent

18. However, along with the documents that the respondents have submitted with the Medical Board proceedings is also a certificate of the Surg Commodore President Medical Board of 11.10.1982 to the effect:-

"has been invalided from Navy service in Medical Category S5A5 permanently. Medical Board held at INHS Asvini, Colaba, Bombay-5 on 11 Oct 82.

2. - The individual is fit for performance of suitable duties in civil service in his life except driving, jobs near water and fire.

Sd/-

(JS Lamba)

Surgeon Commodore

President Medical Board"

19. As per Part-B answered by the OC Unit/Ship, i.e. by the Commanding Officer of INS Virbahu, Visakhapatnam dated 21.09.1982, it was stated therein that the applicant was in medical category S3A2(T-24)(P) since 10.02.1982, that he had been excused 'Submarine and Sailing duties' and the nature of duties given to him were 'Sedentary Duties Ashore'. He was however living in unit lines and not with his family as per this statement. In response to Q. No. 12 & 13, it was stated by the Commanding Officer to the effect:-

" 12. Do you consider the disability/ death is attributable to service. (Give reasons)

No. It is understood that officer has some previous history of the same trouble.

13. Do you consider the disability/ death is aggravated by service. (Give reasons)

No. Due to above reasons."

The Commanding Officer of the applicant thus stated that the disability of the applicant was neither attributable to nor aggravated by service in as much as



the applicant had some previous history of the same trouble.

20. Our attention was drawn on behalf of the respondents to the IMB proceedings of March 1982 wherein in response to Q. No. 1, it was recorded to the effect:-

"1. Did the disability/ies exist before entering service? Yes"

to thus submit that it was recorded in the Opinion of the Medical Board itself that the disability existed before entering service.

21. The records thus speak that during the period of 5 years 11 months and 19 days, the applicant had the onset of his disability de facto apparently as visible from April 1976. As per the opinion of the Classified Specialist in Neurology and Medicine as on 02.08.1982, the applicant was suffering from fits and severe throbbing generalised headache which lasts for 4-5 hours, from April 1976, that is prior to the applicant having been commissioned in the Naval Service on 01.01.1977. The disability of the applicant can thus not be held to be attributable to military service, and in the peculiar facts and circumstances of the instant case cannot also be held to be aggravated by military service. This is so as brought forth through the opinion of Lt. Col. A.S. Narayanan Swamy as on 02.08.1982 which indicates that after treatment given in January/February 1982, it was stated 'there is no fits since then'"

22. From a bare perusal of the Order of the learned AFT, it is evident that it had duly considered the records of petitioner produced by the respondents, that is, copy of the Retired Officer Medical Documents Destruction Register with effect from May, 1979 for MEDIII/MRS in relation to the petitioner and observed that the petitioner was invalided out of service, being in the medical category S5A5, pursuant to the IMB held in November, 1982. The learned AFT also scrutinized the opinion dated 02.08.1982 of the Lieutenant Colonel A.S. Narayanan Swamy, Specialist in Neurologist and Medicine, wherein he opined that the case of the petitioner was a case of generalized Epilepsy, probably Right Temporal Lobe. However, there was no secondary cause for the Epilepsy found and as he had started having seizures during the early part of his career, he was recommended to be invalided out of service. It was further recommended that he stays away from fire, water or heights and refrain from consuming alcohol and driving a vehicle and also that



this therapy would continue for four years and a further treatment would be decided later in the due course of time.

23. The learned AFT further considered the opinion of the Medical Board in Part-III, opining that the said disease of the petitioner was not attributable to and not aggravated by service, or connected with service and opined the same to be a Constitutional Disorder. Furthermore, the petitioner was found to be fit for performance of suitable duties in civil service except the limitations advised as above.

24. Further, the learned AFT referred to the certificate of the Surg Commodore President Medical Board dated 11.10.1982 to the effect that the petitioner has been invalided from Navy service in Medical Category S5A5 permanently. The Medical Board held at INHS Asvini, Colaba, Bombay-5 on 11.10.1982 opined that the individual is fit for performance of suitable duties in civil service in his life except driving, jobs near water and fire.

25. The learned AFT also referred to the answers provided by the Commanding Officer of INS Virbahu, Visakhapatnam on 21.09.1982 and found that since 10.02.1982, the petitioner had been performing 'Sedentary Duties Ashore' and he was not assigned to a submarine or sailing duties. The learned AFT took note of responses of the said Commanding Officer, stating that petitioner's disability was neither attributable to nor aggravated by service. It also noted the response of IMB proceedings of March, 1982, that the petitioner's disability existed before entering the service, thus referring to all of the above, the learned AFT concluded that petitioner's disability cannot be held



to be attributable to nor aggravated by Military service in the peculiar facts and circumstances of the case. The learned AFT, thus, passed a detailed and reasoned Order after noting all the submissions of the parties, the decisions cited before it, as well as the documents produced for its perusal and consequently, granted Invalid Pension to the petitioner, however, not the Disability element of Pension.

26. Evidently, the possibility of the petitioner's Epilepsy disease being dormant at the time of his induction and that it could not have been detected cannot be ruled out. The learned AFT had drawn support from the opinion of the Classified Specialist in Neurology and Medicine, that petitioner was suffering from fits and severe throbbing generalized headache, which lasted for 4-5 hours since April, 1976, which is prior to the petitioner's having joined the Force on 01.01.1977. The petitioner was diagnosed with disability for convulsions as Generalized Epilepsy (LDIOPAHIC) ICD 345 in Medical Category S5A5 and was regarded as NANA by Naval Service.

27. In so far as the question regarding the petitioner suffering from Epilepsy before being commissioned into the service is concerned, the only stand taken by the respondents is that some diseases are dormant in nature and the physical examination of a candidate is limited to broad parameters. It is further not disputed that petitioner remained in the service for a short span of a period of 5 years 11 months and 19 days. There is nothing on the record to show that his disability aggravated due to his service condition.



28. Needless to say that petitioner had not been vigilant about his rights at the time of being invalidated from service, he was 26 years of age and could have understood the repercussions of his discharge from the service. Therefore, at least, he should have made an endeavour to find out the reason for his invalidation and if dissatisfied, he should have approached the authorities in reasonable time to assail the findings of the Medical Board or his invalidation before the medical record could be weeded out. Now at this stage, it is too late to question the medical opinion specifically when all his medical records are not available. Relevantly, the petitioner had approached the learned AFT after a significant delay of almost 35 years, accordingly, his medical record has also been weeded out.

29. In light of these circumstances, we are constrained to hold that there is no infirmity in the Impugned Order passed by the learned AFT and it would not be appropriate for this Court to interfere with the order passed by it, specifically when the order passed is well-reasoned.

30. For the aforesaid reasons, we find no merit in the petition, which is, accordingly, dismissed.

SHALINDER KAUR, J.

NAVIN CHAWLA, J.

NOVEMBER 26, 2024
SU/SK/FK

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