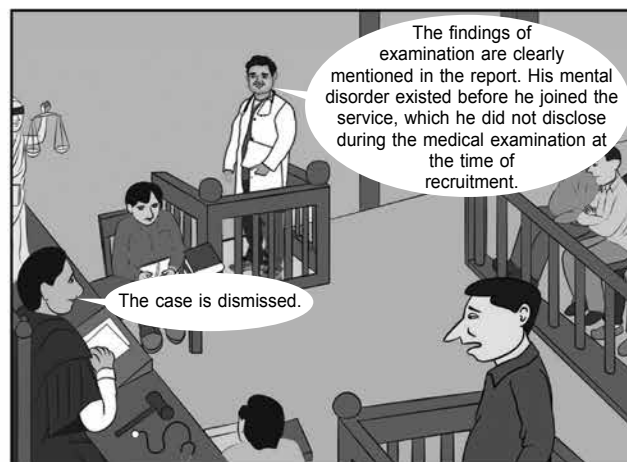


It is Important to Document All Findings and Facts of the Case



Lesson: In *Rakesh Kumar Vs. Union of India and Ors.* OA No. 3622 of 2012 Decided On: 08.05.2015, the Armed Forces Tribunal Chandigarh Regional Bench at Chandimandir observed: "We find it not correct on the part of the petitioner to state that he was not examined for pharyngitis ... Therefore, in our considered opinion, the contention of the petitioner that he was not examined for 'Granular Pharyngitis' falls flat on its face. On the contrary, it was solely in view of his previous history of Panic Attack, that the Medical Board opined that he needed to be evaluated further."

The petitioner filed an appeal before the Armed Forces Tribunal Chandigarh Regional Bench alleging incorrect diagnosis as a result of which he was discharged from Naval service without any pension. He said that he had granular pharyngitis, but he was not examined for the same and instead was wrongly diagnosed as panic disorder with agoraphobia. He appealed for review of his case by a new Medical Board and grant of disability pension stating that his disability was due to the service conditions. The Tribunal examined all records and statements and held that the contention of the petitioner that he was not examined for granular pharyngitis had no merit. And the disability was pre-existing and not due to the service conditions, a fact which had not been disclosed by the petitioner. The Tribunal dismissed the appeal.

COURSE OF EVENTS

- **26.07.2010:** Appellant joined the Indian Navy as a Sailor after he was found fit on medical examination on recruitment. He was sent for ship training after undertaking basic training.
- **14.01.2011:** Petitioner took oath as a Sailor.

- **28.02.2011:** He developed suffered cough and cold problems with fever, medically termed as "Granular Pharyngitis", allegedly due to the stress and strain of training and humid sea climate.

The Naval Doctor referred the Appellant to Senior Adviser in Psychiatry who diagnosed him to be a case of "Panic Disorder with Agoraphobia ICD No. F-40.01".

- **12.04.2011:** As per the opinion of the Specialist (Annexure R-4), the petitioner had manifested with marked anxiety repeatedly in nonthreatening conditions, had poor socio-occupational adjustment and inadequate response to treatment and, therefore, was recommended to be boarded out of service under category S5A5. There was no record of the petitioner having bronchial asthma.
- **11.05.2011:** The Appellant was invalided out of service.

APPELLANT'S APPEAL

The Appellant filed an appeal before the Armed Force Tribunal.

“(i) (a) To issue a direction to the respondents to review his case by holding a fresh Medical Board w.r.t. to the disease ‘Granular Pharyngitis’ and in case found fit, to reinstate him into service w.e.f. the date of his discharge i.e., 11.05.2011; or, alternatively,

(b) To grant disability pension to him on the basis of the said disease w.e.f. 11.05.2011 @ 50% disability in accordance with GOI, Ministry of Defence instructions dated 31.01.2001 with interest; and

(ii) To grant any other relief as the Tribunal may deem fit in the facts and circumstances of the case.”

In his arguments before the Tribunal, the Counsel for the Appellant said that “...the petitioner was wrongly diagnosed as a case of ‘Panic Disorder with Agoraphobia ICD No. F-40.01’ whereas, in fact, he was suffering from the disease ‘Granular Pharyngitis’ which was caused due to the sea climate and was aggravated by the stress and strain of Naval Service and, therefore, it would be in the interest of justice to order holding of a fresh Medical Board of the petitioner in respect of the actual disease ‘Granular Pharyngitis’.”

He also said that the Appellant had been found to be medically fit for service at the time of recruitment. And, as there was no record stating otherwise, he was entitled to receive disability pension because he had been medically invalidated out prematurely in view of the law laid down by the Apex Court in Dharamvir Singh’s case [Dharamvir Singh v. Union of India & Others, Civil Appeal No. 4949 of 2013 (Arising out of SLP(C) No. 6940 of 2010), decided on 2nd July, 2013].

OBSERVATIONS OF THE ARMED FORCES TRIBUNAL

The Tribunal took note of the fact that the Appellant had refused to sign the proceedings of the Invaliding Medical Board and that the Board had answered negative to the two questions put to it (as below).

“(i) Whether the disability existed before entering service?

(ii) In case the disability existed at the time of entry, was it possible that it could not be detected during the routine medical examination carried out at the time of the entry?”

With regard to the first allegation of the Appellant that he had been wrongly diagnosed, the Tribunal observed that he had no symptoms of Granular Pharyngitis such as throat pain, fever, malaise, muscle aches and painful swallowing at the time of medical examination. Instead, the Appellant “complained of giddiness, headache, breathing difficulty when subjected to physical activity and he himself did not complain of any symptoms of Granular Pharyngitis

whatsoever. He only gave a history of sudden onset of severe itching in throat and unable to take breaths with choking sensation in throat immediately after taking a small quantity of rice at lunch on that day.”

After reviewing the medical report, the Tribunal rejected the submission of the Appellant that he had not been examined for pharyngitis as the report clearly stated: “No congestion. No ulceration/growth. Tongue/oral cavity NAD, i.e., no abnormality was detected. Physically patient is asymptomatic. Probably he had a laryngeal spasm and mild allergic reaction to food additives in the masala.”

The Tribunal further said: “We further feel convinced that the petitioner has not come to the Court with clean hands and as stated earlier, his harping on Granular Pharyngitis is a red herring. That is perhaps the reason that he is loath to even rely on his actual disability, i.e., agoraphobia and panic disorder which existed from before joining service and has made him unfit for retention in service.”

“The argument of the petitioner that the diagnosis of ‘Panic Disorder with Agoraphobia’ instead of ‘Granular Pharyngitis’ by the doctors is facetious and perhaps even an affront to the professional acumen of the Naval doctor who was a Senior Adviser in Psychiatry and not a quack or a roadside ‘Neem Hakeem’.”

“We are of the opinion that this infinitesimal service of 14 days is considered too insignificant in cause time relationship to have caused the disability as being claimed by him.”

Based on these observations, the Tribunal rejected the appeal of the Appellant “for a direction to hold a fresh Medical Board and to reinstate him in service.”

The Tribunal cited Dharamvir Singh’s case, wherein the Supreme Court examined various provisions of the Pension Regulations, Entitlement Rules and General Rules of Guidance to Medical Officers in detail and summed up the legal position as below:

“28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under ‘Entitlement Rules for Casualty Pensionary Awards, 1982’ of Appendix II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his

subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

- (iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally (Rule 9).
- (iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service [Rule 14(c)].
- (v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service [14(b)].
- (vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons [14(b)]; and
- (vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the 'Guide to Medical (Military Pension), 2002 - Entitlement: General Principles', ..."

"As per the 'Entitlement Rules for Casualty Pensionary Awards, 1982' of Appendix II (Regulation 173, (vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons and it is mandatory for the Medical Board to follow the guidelines laid down in Chapter II of the 'Guide to Medical (Military Pension), 2002 - 'Entitlement: General Principles', ..."

"We find from the above guidelines that the disability suffered by the petitioner falls in the category of a mental disorder, a mention of which has been made in sub-clauses (d) and (e) of Para 7 of the Guidelines, reproduced above. It overtly falls in the category of diseases which may be undetectable by physical examination on enrollment, unless adequate history is given at the time by the member..."

The Medical Board had evaluated "the disability 'Panic Disorder & Agoraphobia' as 40% for life under low medical category S5A5, further holding it to have been manifested

with marked anxiety repeatedly in nonthreatening conditions which, otherwise, did not exist at the time of entry into service". Also, the proceedings of the Medical Board have very clearly brought out the symptoms of Panic Disorder and Agoraphobia, which led to the Appellant invaliding out of the service.

The Tribunal noted that the invaliding disease had been present before the Appellant had joined the Naval service as was evident from the history of Panic Attack in 2007, which increased in frequency and intensity following a motorbike accident in 2008. "Thus, it is clear that his disability existed from before his joining service. He did not disclose the same during recruitment medical examination. During examination by the Medical Board, he himself further revealed his previous history of Globus Hystericus, again a fact which he did not disclose during recruitment medical examination."

"We feel that the inaccuracy or incompleteness of service record in entry in service was due to a non-disclosure of the essential facts by the member, e.g., pre-enrollment history or an injury, or disease or mental disorder, etc. It may also be that owing to latency or obscurity of the symptoms, a disability escaped detection on enrollment... we hold that the disability cannot be said to have been aggravated by the Naval service. Moreover, the disability having been discovered soon after joining of the petitioner and he having been discharged in his own interest in order to prevent deterioration even if it is considered that there may have been a temporary worsening during service, but if the treatment given before discharge was on grounds of expediency to prevent a recurrence, no lasting damage was inflicted by service and there would be no ground for admitting entitlement under Para 9 of the General Principles for entitlement of the disability pension."

FINAL JUDGEMENT

The Tribunal concurred with the opinion of the Medical Board that "the disability does not bear causal connection with the military service". It also noted that it had not grounds to interfere with the rejection of the disability pension claim of the petitioner under the Pension Regulations for the Navy. The Tribunal dismissed the OA (original application) with no order as to costs.

REFERENCE

1. Rakesh Kumar Vs. Union of India and Ors. Armed Forces Tribunal Chandigarh regional bench at Chandimandir. OA No. 3622 of 2012. Decided on: 08.05.2015.

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