

# Union Of India & Ors. vs Ex Lcom (Tac) Anil Kumar on 1 April, 2025

**Author: C. Hari Shankar**

**Bench: C. Hari Shankar**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3038/2025, CM APPL. 14440/2025 & CM APPL.  
14441/2025

UNION OF INDIA & ORS.

.....Petitioners

Through: Ms. Radhika B. Dubey, CGSC  
with Ms. G. Kaur Waraich and Mr. Kritarth  
Updadhay, Advs.  
versus

EX LCOM (TAC) ANIL KUMAR

.....Respo

Through:

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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01.04.2025

C. HARI SHANKAR, J.

1. The respondent joined the Indian Naval Service<sup>1</sup> on 22 July 2004 as a Sailor. 10 years after he had joined service, he was diagnosed, in February 2014, as suffering from Idiopathic Generalised Epilepsy<sup>2</sup>. He was, therefore, placed in Low Medical Category S3A2(P). He was discharged from INS on 31 July 2019, after serving the INS for over 15 years.

2. The Release Medical Board<sup>3</sup>, which assessed the respondent on 6 May 2019, found him to be suffering from 20% disability for life, 1 "INS" hereinafter 2 "Epilepsy" hereinafter 3 "RMB" hereinafter but opined that the disability (idiopathic generalised epilepsy) was not attributable to military service. The following features of the report of the RMB are significant:

(i) In the Personal Statement provided by the officer, which is not doubted or disputed by the respondent, he has specifically stated that he did not suffer from any disability before joining the naval services.

(ii) In the statement of the Commanding Officer, contained in Part-III of the RMB Report, it is acknowledged that the respondent was in low medical category only for 5 years prior to the report. No doubt, the statement also states that the duties undertaken by the respondent did not involve severe/exceptional stress or strain.

(iii) Thus, it is an undisputed position that, at the time when the respondent joined the INS, he was not suffering from Epilepsy. It is also undisputed that the ailment was detected, in the case of the respondent, 10 years after he had joined military service.

(iv) The reason for opining that the Epilepsy, from which the respondent was found to be suffering, was not attributable to military service, as entered by the RMB in its Report, read thus:

"Neither Attributable to nor aggravated by military service vide para 33 chapter VI of GMO-2008 (onset while on leave)."

Para 33 of Chapter VI of the GMO 2008, to which the aforesaid RMB refers, reads as under:

"33. Epilepsy. This is a disease which may develop at any age without obvious discoverable cause. The persons who develop epilepsy while serving in forces are commonly adolescents with or without ascertainable family history of disease. The onset of epilepsy does not exclude constitutional idiopathic type of epilepsy but possibility of organic lesion of the brain associated with cerebral trauma, infections (meningitis, cysticercus, encephalitis, TB) cerebral anoxia in relation to service in HAA, cerebral infarction and hemorrhage, and certain metabolic (diabetes) and demyelinating disease should be kept in mind.

The factors which may trigger the seizures are sleep deprivation, emotional stress, physical and mental exhaustion, infection and pyrexia and loud noise. Acceptance is on the basis of attributability if the cause is infection, service related trauma.

Epilepsy can develop after time lag/latent period of 7 from the exposure to offending agent (Trauma, years Infection, TB). This factor should be borne in mind before rejecting epilepsy cases.

Where evidence exists that a person while on active service such as participation in battles, warlike front line operation, bombing, siege, jungle war-fare training intensive military training with troops, service in HAA, strenuous operational duties in aid of civil power, LRP on mountains, high altitude flying, prolonged afloat service and deep sea diving, service in sub-marine, entitlement of aggravation will be appropriate if the attack takes place while serving in those areas."

3. After discharge, the respondent claimed disability pension. His claim was rejected by the INS, on the ground that his disability was not attributable to, or aggravated by, military service.

4. Aggrieved, the respondent approached the Armed Forces Tribunal<sup>4</sup> by way of OA 675/2020, which stands allowed by the AFT vide order dated 1 December 2023.

5. The INS, through the Union of India, challenges the decision of the AFT before us, by means of the present writ petition.

6. Ms. Radhika B. Dubey, learned Central Government Standing Counsel, submits that the AFT erred in allowing the respondent's claim, in the teeth of the findings of the RMB.

7. We have already held in *UOI v Ex Sub Gawas Anil Madso*<sup>5</sup>, that the mere fact that the onset of the disease was in a peace time area, it cannot be a ground to deny disability pension.

8. We have, in the said decision, examined practically the entire existing body of case law on the subject, and do not intend to burden this order by redoing the exercise. Some major takeaways from the said decision are, however, the following:

(i) If a disease or ailment was not present at the time of entry of the claimant in military service, it is presumed to be attributable to military service. The longer the military service undergone before the onset of the ailment, the stronger the presumption.

<sup>4</sup> "AFT" hereinafter <sup>5</sup> 2025 SCC OnLine Del 2018

(ii) There are certain diseases which, under the applicable guidelines, are identified as diseases which cannot ordinarily be detected by the tests conducted at the time of induction of the claimant into military service, such as neurological disorders, HIV, asthma with periodic episodes, etc. In such cases, the presumption of attributability under (i) above would not apply.

(iii) Save and except in cases where the claimant prefers his claim for disability pension 15 years, or more, after his discharge or retirement from service, the initial onus to establish that the disease was not attributable to military service is on the military establishment, and not on the claimant. Rule 76 of the 2008 Entitlement Rules, which apply, itself says so.

(iv) The RMB has to give clear and cogent reasons for its decision. Judgments of the Supreme Court, referred in *Gawas Anil Madso*, have clearly delineated the manner in which the RMB is to examine the case, and frame its opinion. There can be no compromise on that score.

9. In the present case, despite the fact that the respondent was not suffering from Epilepsy at the time of his induction in the Naval Force, and the onset of the ailment was 10 years thereafter, the RMB has opined that his ailment was not attributable to military service.

10. Ms. Radhika Bishwajit Dubey has invited our attention to the Ordinarily the claimant will not be called upon to prove the condition of entitlement. However, where the claim is preferred after 15 years of discharge/retirement/invalidment/release by which time the service documents of the

claimant are destroyed after the prescribed retention period, the onus to prove the entitlement would be on the claimant.

report of the RMB, apropos the aspect of attributability of the ailment from which the respondent was suffering to the military service being undergone by him. As already noted, it merely refers to Para 33 of Chapter VI of the GMO 2008, already extracted supra.

11. Apropos Epilepsy, Para 33 of Chapter VI of the GMO 2008, vivisected into its individual components, specifies that:

- (i) Epilepsy can develop at any age, often in adolescents, with or without a family history.
- (ii) while some cases are idiopathic, potential causes include brain trauma, infections, metabolic disorders, or high-altitude anoxia.
- (iii) Epilepsy is considered attributable to service if caused by infections or service-related trauma.
- (iv) Seizures can be triggered by sleep deprivation, stress, exhaustion, infections, fever, and loud noise.
- (v) Epilepsy may develop up to seven years after exposure to trauma, infection, or tuberculosis, which latency period should be considered before rejecting epilepsy cases.
- (vi) Epilepsy aggravation is considered if seizures occur during active service in high-risk environments, and
- (vii) high-risk duties include battles, frontline operations, military training, high-altitude missions, and submarine or deep-sea service.

Refer Para 2(iv) supra

12. The mere fact that para 33 states that, in the case of an officer who was serving in battles, warlike front line operations etc, when epilepsy was first detected, there would be a presumption that the epilepsy was attributable to, or aggravated by, military service, does not imply, as a sequitur, that, in all other cases, the presumption would be otherwise. The contrapositive cannot be implied.

13. If an officer has undergone military service for 10 years before he was found suffering from epilepsy, there can, in our reckoning, be no manner of doubt that an onerous duty would be cast on the RMB to establish that the epilepsy was not attributable to, or aggravated by, military service. This would have to be established by cogent material, after garnering all requisite evidence. The Supreme Court has already laid down the nature of the exercise which has to be undertaken by the

RMB in such cases.

14. In the present case, the reasoning given by the RMB for holding that the Epilepsy from which the respondent suffers was not attributable to military service does not, in our opinion, meet these standards.

15. The emphasis, that we find in RMB report, on the fact that the onset of the ailment, for which the claimant claims disability pension, while he was on leave, appears to us to be misguided. The entitlement to disability pension is only dependent on the ailment, or disability, being attributable to, or aggravated by, military service. There is no further requirement that the military service must have been rendered in a disturbed area, or in an atmosphere where the candidate is subjected to stress or tension. We are in agreement with the AFT that military service, even by its very nature, entails a certain degree of stress and strain, both physical and mental. There can be no universal presumption that epilepsy is attributable to military service only if its onset is while the candidate is on leave.

16. No sufficient reason can be said to have been adduced, by the RMB, for its opinion that the epilepsy from which the respondent was suffering was not attributable to military pension. It merits reiteration that the onset of the ailment was 10 years after the respondent joined the IAF.

17. Given the law in that regard, we are of the opinion that no exception can be taken to the decision of the Tribunal to grant disability pension to the respondent.

18. Accordingly, the order of the Tribunal is upheld. Compliance with the impugned judgment of the AFT be ensured within a period of four weeks.

19. The writ petition is dismissed in limine.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

APRIL 1, 2025 ar [Click here to check corrigendum](#), if any