

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.145 of 2013

Wednesday, the 08th day of January, 2014

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

Ex Sep (No 2575741N). K. Muniyandi (Age 61 yrs)
41/11, Ayyanar Koil Street,
Indira Nagar, K. Pudur,
Madurai 625020, T. Nadu.

... Applicant

By Legal Practitioner:
Mr. SP Ilangovan

Vs.

1. Union of India, Ministry of Defence, Rep. by:
The Defence Secretary, Ministry of Defence,
South Block, DHQ Post,
New Delhi 110011.
2. The Chief of the Army Staff,
Integrated HQ, MOD (Army),
Army Headquarters, Sena Bhavan, DHQ Post,
New Delhi 110011.
3. O I/C, Records, MRC,
PIN 900458, C/O 56 APO.
4. The PCDA (Pension),
Draupathighat, Allahabad,
UP 211014.

... Respondents

By Mr. B. Shanthakumar, SPC

ORDER

(Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiah, Member-Judicial)

1. This application has been filed by the applicant for the relief of grant of eligible disability pension and benefits due to the applicant as per law after setting aside the impugned order of the 2nd respondent in letter No.B/41052/VIP/AG/PS-5 of Integrated HQ, MOD (Army) dated 22.2.2013 as unconstitutional.

2. The factual matrix pleaded would be as follows :-

The applicant was enrolled in the Indian Army in MRC on 27.9.1976 after undergoing rigorous physical fitness and medical examination. He was attested on 17.10.1977 and was posted to 1 Madras Regiment at Jaipur. The applicant was subjected to continuous training, prolonged marching and desert warfare exercises. At the same time, the applicant was also affected by natural calamities caused due to cyclone and floods at his native place which rendered his family members homeless. The application of the applicant for leave was also rejected. Due to mental worries and lack of rest and sleep deprivation, the applicant was mentally affected and was treated at CH, Pune from 15.4.1980 till 11.9.1980. Since he was not cured, he was invalided out from service on 28.11.1980 under Army Rule 13(3) III (iii) in

Lower Medical Category 'EEE' on account of the disease 'Unspecified Psychosis'. His disability pension papers were recommended and forwarded to PCDA (P), Allahabad. However, PCDA (P) had rejected the disability pension claim of the applicant without any medical opinion that the disease 'Unspecified Psychosis' suffered by the applicant existed before the service of the applicant or the military service did not attribute or aggravate the said disease. After his discharge from military service, the applicant was not given with any civil employment and he was unable to maintain himself and his family. The applicant being a non-pensioner could not be treated in Military Hospital and the applicant could not get treatment for his frequent attacks of fits nor the applicant could get any legal assistance to pursue the matter, further. The applicant having learnt the decisions of High Courts in granting disability pension to those persons affected by 'Psychosis' has come forward to file this application through Tamil Nadu State Legal Services Authority. The applicant was discharged from army on Lower Medical Category of "EEE (PMT) with 50% disability for life" against his initial medical category of "AYE ONE". Therefore, the disease 'Unspecified Psychosis' should have been contracted in the course of army service and the disease should have been as attributable to or aggravated by military service as per Rules 4, 5a, 8 & 9 of Entitlement Rules For Casualty Pensionary Awards, 1982. The Psychosis is clearly covered as attributable to/aggravated by military service for granting disability pension in Item 33 of Amendment to

Chapter VI & VII – Guide to Medical Officers (Military Pensions), 2008. All these categorisation were considered by the respondents, but the disability pension claim of the applicant was rejected. Therefore, the rejection order passed by the 2nd respondent should be set aside and the applicant be granted with disability pension from the date of invalidation with costs. Thus the application may be allowed.

3. The objections raised by the respondents in the Reply Statement would be as follows :-

The service documents of the applicant including the medical documents have been weeded out during the year 2007 after the prescribed retention period of 25 years, the applicant being a non-pensioner as per Para-595 of Regulations for the Army, 1987 (Revised Edition), Volume II. As per the Long Roll maintained by the Records, the applicant was enrolled in the army on 27.9.1976 and was discharged from service on 27.11.1980 under Army Rule-13 (3) III (iii) having been found medically unfit. The applicant rendered 04 years 62 days qualifying service. No other details have been available on the subject. The disability of the applicant was neither attributable to nor aggravated by military service as seen from the Annexures attached with the Original Application. The applicant submitted first and second appeals against the rejection of disability pension which were also turned down by the Government of India, Ministry of Defence. As

per Regulation-173 of Pension Regulations for the Army, 1961 (Part I), the disability should have been attributable to or aggravated by military service and is assessed 20% or over and the individual should have been invalided out from service. The applicant had approached this Tribunal after a period of 33 years. He waited for the documents to be destroyed and claimed the benefit in the belief that he could win the sympathy of the Court. The PCDA (P), Allahabad, had rejected the disability pension claim of the applicant since the disability due to which the applicant was invalided out from service was neither attributable to nor aggravated by military service. The rejection of disability pension was intimated to the applicant in the year 1981 itself and the rejection was not done through the order dated 22.2.2013. Since the related documents are not available with the respondents, it cannot be considered that the applicant was entitled to disability pension as sought for. Therefore, the application has to be dismissed as devoid of merits.

4. On the above pleadings, we have framed the following points for consideration in this application :-

- 1) Whether the impugned order dated 22.2.2013 passed by the 2nd respondent intimating the contents of the letter dated 13.4.2011 rejecting the disability pension is liable to be set aside ?

- 2) Whether the applicant is entitled to disability pension at 50% as prayed for ?
- 3) To what relief the applicant is entitled for ?

5. Heard Mr. SP Ilangovan, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel, assisted by Captain Vaibhav Kumar, Learned JAG Officer appearing for the respondents.

6. The Learned Counsel for the applicant would submit in his argument that the applicant was enrolled in the Indian Army on 27.9.1976 in a hale and healthy condition after undergoing a thorough medical examination. He served the nation for a period of 4 years 62 days, after he was attested on 17.10.1977. He would also submit that due to the lack of rest and sleep deprivation on account of strenuous training, the applicant was mentally affected and was treated in the Commandant Hospital, Pune, and he could not be cured. The applicant was placed under Lower Medical Category 'EEE' on account of the disease 'Unspecified Psychosis' and was invalidated from service on 28.11.1980 under Army Rule 13(3) III (iii). He would also submit that the said disease was wrongly considered as not attributable to nor aggravated by military service and the applicant was not granted any disability pension at the time of his discharge. He preferred first appeal against the rejection of disability pension and the same was forwarded to the

CDA (P), Allahabad on 22.8.1981, but was ultimately rejected by the Ministry of Defence, New Delhi, without any appreciation on 30.6.1983. The final appeal was preferred against the said order on 18.11.2003 and no decision has been reached and intimated in the second appeal. He would also submit that the respondents have wrongly rejected the claim for disability pension to the applicant for the disability of 'Unspecified Psychosis-298' since the said disability was considered as not attributable to or aggravated by military service or due to the stress and strain of the said service. He quoted a Judgement of Hon'ble Punjab and Haryana High Court made in **Civil Writ Petition No.13319 of 1991 dated 17.7.2000** in between **Pargan Singh Vs. Union of India** in support of his submissions. He would also rely upon yet another Judgement of Punjab and Haryana High Court at Chandigarh made in **CWP No.3817 of 2004 dated 17.10.2006** in between **Ex. Rfn. Iqbal Singh Vs. Union of India and others** in favour of his case. He would also rely upon the Judgement of Hon'ble Apex Court made in **Civil Appeal No.4949 of 2013 dated 2.7.2013** in between **Dharamvir Singh Vs. Union of India and others** in respect of the grant of disability pension to an invalided person from service on account of his disability. Relying upon those Judgements, he would also argue that the sound physical and mental condition of an individual should have been presumed at the time of entering service, if there is no note or recording of the disease at the time of entrance. He would stress in his argument that

there was no record produced by the respondents that there was some physical or mental disability for the applicant noted at the time of medical examination conducted while the applicant was enrolled in the army. He would, therefore, submit that the disability, namely 'Unspecified Psychosis-298', which caused the invalidation of the applicant from service should have been presumed to have been attributed to or aggravated by military service and the disability pension ought to have been granted by the respondents. He would, therefore, request us to grant disability pension to the applicant at the minimum rate of 50% as asked for in the application.

7. The Learned Senior Panel Counsel would submit in his argument that the arguments advanced by the Learned Counsel for the applicant that the applicant preferred second appeal in the year 2003 cannot be correct since the applicant kept quiet after the rejection of the first appeal preferred by him against the rejection of the disability pension. He would further submit that the communication issued by the 1st respondent on 30.6.1983 to the applicant regarding the rejection of first appeal would show that the applicant was given a liberty to file an appeal for being considered by the Defence Minister's Appellate Committee on Pensions within a period of six months. He would also submit that the applicant did not prefer any second appeal within the time as allowed, but filed a petition for the grant of disability pension only on 6.3.2002, which was replied by the Madras

Regiment Abhilekh Karyalaya, Records The Madras Regiment, in its letter dated 13.3.2002 stating that the applicant did not prefer any final appeal to the Defence Minister's Appellate Committee on Pension within the stipulated time and this would go to show that the forwarding of second appeal by the said Madras Regiment on 9.1.2004 could not be a correct presentation of second appeal. He would also submit that the relevant records of the applicant being a non-pensioner, was destroyed after the lapse of the statutory period since he did not prefer any second appeal and, therefore, no documents could be produced by the respondents on the highly belated claim for disability pension. He would also cite the Judgement of the Hon'ble High Court of Delhi in **Case No.6170 of 1998** in between **Ramchander Vs. Union of India** for the principle that the delay and laches will disentitle the claimant from making the claim of pension. He would also cite a Judgement of High Court of Delhi made in **C.M. No.2063 of 1993 and C.W. No.1267 of 1993 dated 31.7.1995**, in between **Hans Ram Vs. Union of India and Others** for the principle that the absence of records due to destruction in accordance with the procedure will make the claim of the applicant for pension as affected by delay and laches. He would further submit that when the documents are not available with the respondents in order to find out whether the disability of 'Unspecified Psychosis' would be attracted under category of attributable to or aggravated by military service on the opinion of Medical Boards, it cannot be possible for this Tribunal to apply the

principles made in the Judgement of Hon'ble Apex Court in **Dharamvir Singh's case**. He would also submit that the mere keeping of the applicant in Low Medical Category would not entitle the applicant to get 50% of disability in the absence of any records to show the actual disability and the duration of such disability. He would, therefore submit that the application seeking for disability pension at 50% may not be entertained for want of records and for the long delay and laches on the part of the applicant.

8. We have considered the arguments of both sides after giving anxious thoughts to them. We have also perused the documents produced on either side.

9. **Points 1 and 2:** The indisputed facts are that the applicant was enrolled in the army on 27.9.1976 and he was attested on 17.10.1977 and was discharged from service on 27.11.1980 in consequence of invalidation from army service under Rule-13(3) III (iii) of Army Rules, 1954. The duration of the service was 04 years 62 days. No doubt, the invalidation of the applicant was caused due to a disease, namely 'Unspecified Psychosis-298' and the applicant was placed under Low Medical Category 'EEE' before such invalidation. The respondents' contention would be that the said disease 'Unspecified Psychosis-298' was not attributable to nor aggravated by military service and, therefore, the disability claim of the applicant was

rejected by the respondents and the applicant did not prefer the final appeal despite he preferred first appeal, which was rejected by the competent authority. Per contra, it was argued by the Learned Counsel for the applicant that the applicant's second appeal was forwarded by the Madras Regiment Abhilekh Karyalaya, in the year 2004 and, therefore, it cannot be said that the records of the applicant, being a non-pensioner, were destroyed as per rules. At this juncture, we have to see whether the preference of second appeal by the applicant on 18.11.2003 was a valid one. The applicant has produced Annexure A-7, a letter dated 9.1.2004, in which the second appeal dated 18.11.2003 preferred by the applicant was forwarded to the Government of India, Ministry of Defence. Whether this could be considered as second appeal preferred by the applicant ? The applicant himself has produced Annexure A-3 in which he had preferred first appeal against the rejection of disability pension on 30.3.1981, which was forwarded to the CDA (P), Allahabad. The said first appeal was rejected by the competent authority and it was communicated to the applicant on 30.6.1983 (Annexure A-14). In the said communication, the applicant was given liberty to prefer a final appeal before the Defence Minister's Appellate Committee on Pension against the said decision within a period of six months from the date of receipt of the said letter. The said letter was dated 30.6.1983 and was addressed to the applicant, which has been produced by the applicant as A-14. Therefore, we could see that the applicant should

have preferred a final appeal within six months from the date of receipt of the said letter dated 30.6.1983. Annexure A-15 produced by the applicant would go to show that the petition filed by the applicant on 6.3.2002 was answered by the Madras Regiment Abhilekh Karyalaya, Records, that the applicant had failed to prefer final appeal before the Defence Minister's Appellate Committee within the stipulated time as per the letter dated 30.6.1983 and the applicant was not, therefore, eligible for the grant of disability pension as per existing rules. The said facts have not been controverted or shown to be wrong by producing any records that the applicant had preferred a final appeal in time. Whereas Annexure A-16 was relied upon by the applicant that he had preferred second appeal against the order passed in the first appeal during 1983. It cannot be the second appeal as argued by the Learned Counsel for the applicant. The applicant was not careful in preferring the final appeal as against the rejection of the first appeal. The alleged sending of applications would not in any way save the period of time to destroy the records of the applicant as per rules. A signal produced by the respondents for the inability of producing records would show that the service documents including medical documents in respect of the applicant were weeded out during 2007, having outlived the prescribed period of retention. The applicant had come forward with this application for disability pension on 2.8.2013 only. Even after preferring a second appeal

according to him in the year 2004, the applicant did not pursue the matter before the appropriate forum.

10. In the said circumstances, whether this Tribunal can adjudicate upon the claim of the applicant without any medical records or service records of the applicant ? No doubt, the invalidation of the applicant was done due to the disease 'Unspecified Psychosis-298' wherein he was placed under Lower Medical Category. It is the definite case of the respondents that the said disease was not attributable to or aggravated by military service. Reliance was placed by the Learned Counsel for the applicant that the said disease 'Unspecified Psychosis' is presumed to be a disease acquired due to stress and strain caused in the military service. He would quote Entitlement Rules-54 in support of his argument. In order to draw the presumption in favour of the applicant, the applicant should have shown that the disease 'Unspecified Psychosis' was opined to be a permanent disability throughout for his life. No medical documents have been produced to show the duration of disability nor the quantum of disability reached by the Invaliding Medical Board. In such background, it may not be feasible for the Tribunal to draw a presumption as laid down in the Judgements cited by the applicant.

11. When the documents related to the service and medical disability of the applicant are not available, the Judgement of Hon'ble Delhi High Court

made in **C.M. No.2063 of 1993 and C.W. No.1267 of 1993** in between **Hans Ram Vs. Union of India and Others dated 31.7.1995**, is found squarely applicable to the present case. The relevant portion would be as follows :-

"The respondents have stated on oath that the service record of the petitioner is not available to verify the correct facts and place the same before the Court. It is also submitted that if such petitions are entertained it would tantamount to opening a pandora's box creating serious financial and other complications.

It is true that ordinarily in matters relating to pension the writ courts do not deny the relief on account of delay merely. A sympathetic and liberal view is always taken. Indulgence is invariably shown. In the case of Bachan Kaur Vs. Union of India (W.P.621/89) decided on 13.4.85, a Division Bench of this Court has taken the view that a writ petition claiming pension if the claim be otherwise just and legal may be entertained and allowed limiting the same to a period of three years before the date of filing of the petition. In the present case the petitioner has on account of culpable delay and laches extending over a period of 25 years himself created a situation which disentitles

him to any relief. The service record of the petitioner is not available. It is not known as to why and in what circumstances the petitioner was paid merely the gratuity and yet felt satisfied therewith though no pension was allowed. If only the petitioner would have approached the Court within a reasonable time, the respondents could have been directed to search and produce the relevant service record of the petitioner enabling a just decision of the petitioner's claim, which is not possible in the present case. The entire fault is of the petitioner. However sympathetic we may be with the petitioner, sitting as a writ court, we cannot grant relief of pension to the petitioner merely as a charity or bounty in the absence of relevant facts being determinable and relevant comments available. For the foregoing reasons the petition is dismissed though without any order as to costs."

12. In this case also, the respondents produced a signal to the effect that the service and medical records of the applicant were weeded out due to lapse of retention period as per law. We have already found that the applicant was not pursuing the case even after preferring a highly belated second appeal before the Government. Therefore, we find that the destruction of the service and medical documents of the applicant was done by the respondents in accordance with law. Therefore, the duration and

quantum of disability caused by the disease 'Unspecified Psychosis-298' cannot be presumed to be 50% and life long as desired by the applicant. It is also clearly mentioned in the said Judgement that pension is not a bounty or charity given to any person, but it should have been earned. The disability pension should have been given to the deserved person, who was disabled due to the disease attributable to or aggravated by military service. Para-173 of Pension Regulations for the Army, 1961 (Part-I) would be as follows :-

"173. Unless otherwise specifically provided a disability pension consisting of service element and disability element 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 in non-battle casualty and is assessed 20 per cent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.

13. According to the above Rule, it is very clear that the disability should have been attributable to or aggravated by military service and it should have been 20% or more which caused the invalidation. As far as this case is

concerned, we do not find any record to show that the disability of the applicant which caused his invalidation from service in the year 1980 was attributable to or aggravated by military service nor its duration and quantum have been established. As discussed above, we cannot presume the quantum and the duration of the disability in the absence of the medical records which were destroyed in accordance with procedural laws.

14. Furthermore, the applicant was not diligent in preferring the final appeal against the first appeal within the time limit as given to him in Annexure A-14. Even after filing a representation in the year 2002 or preferring a belated second appeal in the year 2003, no steps have been taken by the applicant till 2nd August, 2013. This would show laches on the part of the applicant. The delay and laches on the part of the applicant was not explained except with a reason that he was not legally equipped. The said reason cannot be a ground to grant the reliefs without records. The impugned order challenged before us is the communication in the year 2011 and 2013, and the said letters would not give rise to any cause of action since the rejection of disability pension dated back in the year 1981 and rejection of first appeal in the year 1983. Viewed from any angle, we do not find any merit in the case of the applicant. Accordingly both the points are decided against the applicant.

15. **Point No.3:** In view of our discussion held above, we find that the applicant is not entitled for the relief of setting aside the impugned order as well as the grant of disability pension sought for. The application filed by him for the grant of disability pension is liable to be dismissed. Considering the plight of the applicant, there is no order as to costs.

16. In fine, the application is dismissed. There shall be no order as to costs.

17. The Advocate's fee for the Legal aid Counsel appearing for the applicant is fixed at Rs.5000/- and the High Court Legal Services Committee, Chennai-104, is directed to pay the said fees towards the services rendered by the Learned Counsel for the applicant.

Sd/-
LT GEN ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)

Sd/-
JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)

08.1.2014
(True Copy)

Member (J) – Index : Yes / No

Internet : Yes / No

Member (A) – Index : Yes / No

Internet : Yes / No

To,

1. The Defence Secretary,
Ministry of Defence,
South Block, DHQ Post,
New Delhi 110011.
2. The Chief of the Army Staff,
Integrated HQ, MOD (Army),
Army Headquarters, Sena Bhavan, DHQ Post,
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Draupathighat, Allahabad,
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5. Mr. SP Ilangovan,
Counsel for applicant.
6. Mr. B. Shanthakumar, SPC
For respondents.
7. High Court Legal Services Committee,
High Court Campus,
Chennai-104.
8. OIC, Legal Cell (Army),
ATNK& K Area HQ,
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9. Library, AFT, Chennai.

**HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)**

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