

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

O.A NO. 427 OF 2010

Ex Sailor Ishwar Singh

... Petitioner

Versus

Union of India and others

... Respondents

For petitioner

: Mr. S.R Kalkal, Advocate

For respondents

: Mr. Ankur Chibber, Advocate

CORAM

**HON'BLE MR. JUSTICE A.K MATHUR, CHAIRPERSON
HON'BLE LT GEN S.S DHILLON, MEMBER**

J U D G M E N T

22.09.2011

S.S Dhillon, Member:

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act 2007. The applicant is aggrieved by the

non-payment of disability pension/service element of pension to him. He seeks disability pension with effect from the date of its stoppage in 1974; along with payment of service element of pension under Regulation 186(2) of Pension Regulation for the Army 1961. The applicant also desires to be put through a Re-survey Medical Board to assess his present disability.

2. The applicant was enrolled in the Navy on 17.4.1968 as a Sailor, after having been found physically and medically fit in all respects. While in service, due to the sudden death of the applicant's brother, followed by the suicide of his sister-in-law, the applicant developed great anxiety and went into extreme mental depression. The applicant was admitted and treated in hospital and was placed in Low Medical Category (Temporary). Subsequently on review, he was invalidated out of service. An Invalidating Medical Board was held, which assessed his disability at 20% for two years according to the Rules and Regulations then prevalent and he was declared suffering from "Neurotic Depressive Reaction". The applicant was discharged from service on 24.11.1972 after serving

approximately 4 years and 7 months with a disability pension of 20% for two years. The invalidating Medical Board declared the disease as "constitutional" and not "attributable or aggravated" by military service.

3. The applicant argued that although the respondents supposedly sent him some letters to appear before a Re-survey Medical Board, these letters were not received by him. He obtained copy of respondents' letter of 7.2.1975 under RTI. Counsel for the applicant pleaded that disability pension constituted a disability element of pension as well as a service element of pension and even if the disability element was discontinued, the applicant was still entitled to service element of pension. Counsel for the applicant referred to various decisions of the Supreme Court and various High Courts, which had ruled on the service element of the disability pension as well as on the aspect of delay and laches. Counsel for the applicant also drew our attention to Government of India letter of 30.10.1968, Pension Regulations 173, 179 and Entitlement Rule Para 4 as well as Regulations 10 and 82 of the

Navy as well as an earlier judgment of the Tribunal in T.A No. 184 of 2009.

4. The respondents contested the issue by bringing out that there has been no violation of any Rules, Regulations or Procedures in the assessment of his disability. In fact, it is the applicant who himself chose not to pursue the matter by not appearing before the Re-survey Medical Board even after 35 years of his disability and till date had not appeared for such re-assessment Medical Board.

5. The fact of the matter is that an Invalidating Medical Board was held on 12.9.1972, which assessed the applicant's disability at 20% for a period of two years and considered the disease as "A constitutional disability which manifested itself during service due to severe domestic stress. Service records have no bearing on his disability". Accordingly, the disability for Neurotic Depressive Reaction was assessed at 20%. An Appellate Medical Board was subsequently held, which re-assessed the applicant's disability at 30% for two years and considered it as aggravated by

service. In compliance of such decision, the applicant was sanctioned disability pension at Rs.40/- per month consisting of both service and disability elements from 25.11.1972 to 11.9.1974. Prior to expiry of the initial grant of disability pension, a Re-survey Medical Board was arranged at Base Hospital, Delhi Cantt in accordance with the Rules and a call notice, along with a Railway warrant for the journey, was sent to the applicant on 27.8.1974. The applicant failed to appear before the medical Board, despite reminders being sent to him on 20.1.1975 and 7.2.1975. None of these letters elicited any response from the applicant. Approximately 27 years thereafter, the applicant approached the authorities for continuance of his disability pension vide his letter of 15.10.2002. The applicant was asked to forward a non-conviction certificate for the interim period along with an explanation for not appearing before the Re-survey medical Board. To this also, the applicant did not send any reply. Six years thereafter, the applicant again approached the authorities for providing his discharge certificate and his service particulars, which were provided to him on 25.5.2009 and 25.2.2010. Thereafter the applicant again sought

copies of the invalidating medical Board and the call up letters for the Re-survey Medical Board, which were sent to him on 9.1.2010.

It was, therefore, evident that the disability pension was discontinued for his own fault of not appearing before the Medical Board. The disability pension was discontinued after expiry of the initial grant of pension because the applicant failed to appear before the Re-survey Medical Board for re-assessment of his disability, which is an essential requisite for further continuance of his disability pension.

6. Counsel for the respondents argued that the various judgments cited by the applicant have no relevance to the case in hand as the applicant's pension was discontinued for the reason that he himself had not appeared before the Re-survey Medical Board, whose findings are *sine qua non* for deciding further continuance of the applicant's disability pension. Similarly, the judgments on delay and laches cited by the applicant are of no relevance to his case since his disability pension was never rejected on grounds of delay. It was reiterated that the reason for the

discontinuance of his disability pension was that the applicant himself has failed to appear before the Re-survey Medical Board for re-assessment of his disability. The Invalidating Medical Board was held on 12.9.1972 and since then, almost 39 years have passed and he has not yet appeared before the Re-assessment Medical Board. At this belated stage it would be well nigh impossible to grant him any disability after almost four decades of his refusal to appear before a Re-survey Medical Board.

7. Keeping in view the above facts, we find no justification in the application for grant of disability pension. Accordingly it is dismissed. No order as to costs.

A.K MATHUR
(Chairperson)

S.S DHILLON
(Member)

Pronounced in open Court
on 22nd September 2011