

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No. 29 of 2014

Wednesday, the 11th day of February 2015

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

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Ex Hav Akbar Pasha
(Service No.2776925 W)
S/o Late Abdul Subhan
Muslim, aged 49 years
R/o No. 65-3-496
Ex Servicemen Colony
Malkapuram
Vishakapatnam-530 011.

..Applicant

By Legal Practitioners:
Ms. Tonifia Miranda

vs.

1. Union of India
Rep. by its Secretary
Ministry of Defence, New Delhi-11.

2. The Chief of Army Staff
Army HQ, DHQPO, New Delhi-11.

3. The Record Officer
The Maratha LI, Belgaum-9
Karnataka State.

4. The Principal Controller of
Defence Accounts
Office of PCDA (Pensions)
Pin 271 014.

..Respondents

By Mr. E. Arasu, CGSC

ORDER

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

1. This application is filed by the applicant for the reliefs to direct the respondents to produce all the Court of Inquiry proceedings, Medical Records and Medical Board Proceedings concerning the applicant and to grant disability pension from the date of invalidation, i.e., 01.04.1998 till this date along with interest at 9% p.a. for the arrears.

2. On a careful perusal of the pleadings submitted and the arguments advanced before us, we find that the applicant was enrolled in the Indian Army, Maratha Light Infantry on 14.12.1981 and after serving for more than 16 years, he was downgraded to medical category C.E.E.(T) on several occasions. The said downgradation was due to the sustenance of serious blood injury to his left eye which was declared as attributable to military service by the Court of Enquiry. Since there was no improvement, he was downgraded to said category permanently. Due to his service in the field and HAA Areas without access to potable water, his kidney was damaged and he had undergone operation for Renal Calculus (Right) during May 1995 in Base Hospital, Srinagar. The applicant was again downgraded to medical category E.E.E.(T) and thereafter to E.E.E. (P). Due to the said

operation, he became obese and was unable to take up sheltered appointment. He claimed for disability pension on both the medical categories at the time of discharge from the army, but it was bluntly rejected by the respondents. Therefore, he is before this Tribunal.

3. The respondents would admit the pleas of the applicant to certain extent and denied that the disabilities as put forth by the applicant were not attributable to or aggravated by military service. It was further denied that the applicant was/is not entitled for the disability pension of both the disabilities as per Rule 173 of Pension Regulations for the Army 1961 Part-I, since the requirement of those provisions are not complied with by the applicant. Therefore, the respondents would submit that the claim of the applicant be dismissed.

4. We have directed the respondents to produce all the documents in original and its copies as mentioned in the letter of the 3rd respondent addressed to 4th respondent dated 7.5.2004. Accordingly, the respondents produced the documents mentioned in the letter in original with respective copies.

5. After hearing the arguments of both sides and on perusal of the documents produced by the respondents, we find that convening of a Review Medical Board was imminent to ascertain the present degree of both the disabilities, viz., (1) Central Serous Retinopathy (both eyes)

and (2) Renal Calculus (RTD) (OPTD), if any, as the probable duration of those disabilities were for two (2) years. As per our directions in our order dated 07.08.2014, a Review Medical Board was constituted and the applicant was examined for the said purpose mentioned in our order aforesaid and a report dated 05.12.2014 was also filed.

6. We further heard Ms. Tonifia Miranda, learned counsel for the applicant and Mr. E. Arasu, learned CGSC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for the respondents. We have once again gone through all the documents produced on either side and the Review Medical Board proceedings.

7. On the above pleadings and the arguments submitted on either side, we found the following points emerged for consideration in this application.

(1) Whether the disabilities sustained by the applicant, viz., Central Serous Retinopathy (both eyes) and Renal Calculus (RTD) (OPTD) were attributable to or aggravated by military service?

(2) Whether the applicant is entitled for disability pension as prayed for by him?

(3) To what relief the applicant is entitled for ?

8. **Point Nos. 1 and 2:** The indisputable facts in this case would be that the applicant was recruited in the Indian Army on 14.12.1981 and he served in various places and he was invalided out of service on

31.03.1998 under Army Rule 13(3) Item III (v) due to his unwillingness to continue in sheltered appointment and the applicant was granted with service pension for his service of 16 years, 03 months and 03 days of service.

9. The claim of the applicant is that the applicant was invalidated out for the disabilities, viz., Central Serous Retinopathy (both eyes) and Renal Calculus (RTD) (OPTD) and those disabilities were attributable to and aggravated by military service, however, the PCDA has rejected the claim of disability pension on a finding that the disabilities were constitutional in nature and not related to service. The claim for pension before the Pension Adalat was also not considered and therefore, he has filed the present application.

10. The respondents' stand would be that both the IDs were not attributable to or aggravated by military service and therefore, the PCDA rightly rejected the claim of the applicant for disability pension. Similarly, the Pension Adalat has also considered the non-attributability and non-aggravability of both the IDs and did not rightly consider the claim of the applicant. Therefore, the respondents seek for dismissal of the application.

11. For considering the rival submissions, we have gone through the Invaliding Medical Board proceedings dated 05.02.1998 (Annexure-

III) and find that the IDs Central Serous Retinopathy (both eyes) and Renal Calculus (RTD) (OPTD) originated on 15.02.1988 and May 1994 respectively which were after the enrolment of the applicant in the Indian Army. The IDs were assessed at 15% to 19% each and the composite assessment was at 30% for a duration of two (2) years only. Since the said disability duration was only upto the year 2000, we had ordered the constitution of a Review Medical Board for the assessment of the probable duration, if the said disabilities still exist in the applicant. In the Review Medical Board took place on 05.12.2014, it was categorically found that both the IDs are still persisting on the applicant at 15% to 19% and 30% respectively and a composite assessment of 40% exists and the duration for which disabilities would be life-long. The Review Medical Board also found that the 40% disability is qualifying one for the grant of disability pension to the applicant. The Review Medical Board while reaching the conclusion regarding the assessment or quantification of degree of both the IDs for disability pension have also opined that the probable duration be throughout the lifetime of the applicant. They have perused the earlier Invaliding Medical Board proceedings and also conducted various examinations on the applicant. Even though the Review Medical Board has not asked for, have given the opinion that the first ID, viz., Central Serous Retinopathy (both eyes)-362 was attributable to service (as in

IAFY-2006 dated 07.10.1988) and the second disability, viz., Renal Calculus (RTD) (OPTD)-592(a) was due to the aggravation in service as per Para 75 of Chapter VI of Guidelines to Medical Officers, 2008, since the onset was on the applicant while serving in Field/HAA area in Jammu and Kashmir Area (OP Rakshak). No doubt both the disabilities were contracted, after the applicant entered into service and this could be seen from the proceedings of the Invaliding Medical Board wherein it has been clearly referred to in the Sheet Roll proceedings containing history records produced as Annexure R.II that the injury sustained by him on 15.02.1988 was found attributable to military service in field area. It is shown at page No.15 of the typed set. In the Invaliding Medical Board proceedings also, the said ID was found attributable to military service. The said certification was supported by the hospital records. However, the PCDA has come to a conclusion of rejecting the disability pension for the said ID also.

12. As regards the second ID, viz., Renal Calculus, it was contracted during the service of the applicant. The submission of the learned counsel for the applicant that the said ID did happen to the applicant while he was in service in Jammu and Kashmir and therefore, the presumption as to the probability should have been considered by the Medical Board in view of the principles laid down by the Hon'ble Apex Court in **Dharamvir Singh's** case. Furthermore, the Review Medical

Board has referred the earlier records and had opined that the Guidelines to Medical Officers, 2008 at Chapter VI para-75 would include that the second ID also was aggravated due to military service. There is no dispute that the applicant was serving in the Army even after he sustained second ID in May 1994. Therefore, the rejection of the said ID as not aggravated by military service by the PCDA in the year 1998 cannot be sustained. It is a settled principle that the opinion of the medical experts should have been given primacy and credence as per the dictum laid down by the Hon'ble Apex Court in the judgment made in **A.V. Damodharan's case**. However, the PCDA has simply rejected on a medical advice said to have been given by the medical team and rejected the disability pension of the applicant. The said decision of rejecting the disability pension of the applicant on 09.09.1998 by PCDA has no locus to stand and therefore, it is not at all sustainable.

13. The applicant ought to have been granted disability pension from the date of his invalidment for both the IDs but his claim was rejected by the Pension Adalat which is unfortunate. The applicant did not approach any other legal forum thereafter, but he had come forward now only to challenge the orders passed by the PCDA dated 09.09.1998 in this application which is after a long delay. Furthermore, there was no proof in respect of the continuance of both disabilities even after

2000 till the date of convening the Review Medical Board. Now the Review Medical Board has categorically come down with clear findings regarding the probable duration of the disabilities for life and the degree of both the disabilities were opined as 15% to 19% and 30% respectively and composite disability is opined as 40%. While disposing the application for condoning delay in filing O.A., we passed an order with a condition that the applicant would be granted disability pension commencing from three (3) years prior to the date of filing of this Original Application, if found eligible, on the principles laid down by the Hon'ble Apex Court in **Tarsem Singh's** case. Therefore, the applicant is found entitled to the disability pension as opined in the Invaliding Medical Board and the Review Medical Board, from a period of three (3) years prior to the date of filing of this application only.

14. As regards the claim for broad-banding, it is not disputed that the applicant was invalided out of service and was receiving his service pension since he had completed more than the minimum of qualifying service. According to the benefit given under the letter of Government of India, Ministry of Defence dated 31.01.2001, the applicant is also entitled for broad-banding as per the terms of Para 7.2 of the said letter. Therefore, the disability of 40% sustained by the applicant shall be rounded off to 50% as per Para 7.2 and accordingly, he is entitled to the disability being sought for by him. For the above discussions

held by us, both the points are decided in favour of the applicant to that extent.

15. **Point No.3:** In the above points we have discussed and reached a finding that the applicant is entitled for disability pension at 50%, only for the period of three (3) years prior to the date of filing of this application. Accordingly, the disability element of pension at 50% shall be paid to the applicant with effect from 25.09.2010. The application is thus allowed to that extent and the respondents are directed to pay the arrears of disability element of pension payable to the applicant with effect from 25.09.2010 till this date and also towards future period and to issue PPO to that effect within a period of three months' time. In default, the arrears shall be paid with interest at 9% p.a.

16. With the above direction, the application is ordered accordingly . There will be no order as to costs.

Sd/

LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/

JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

11.02.2015
(True copy)

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

vs

To:

1. The Secretary
Ministry of Defence, New Delhi-11.
2. The Chief of Army Staff
Army HQ, DHQPO
New Delhi-11.
3. The Record Officer
The Maratha LI
Belgaum-9
Karnataka State.
4. The Principal Controller of
Defence Accounts
Office of PCDA (Pensions)
Pin 271 014.
5. Ms. Tonifia Miranda
Counsel for applicant
6. Mr. E. Arasu, CGSC
For respondents.
7. OIC, Legal Cell, ATNK & K Area, Chennai.
8. Library, AFT/RBC

MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

O.A.No.29 of 2014

Dt: 11.02.2015