

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.46 of 2014

Monday, the 16<sup>th</sup> day of February 2015

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

AND

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

Lt Col (Retd) SS Rao Namana  
(Service No.SL-3342Y)  
Flat No:L/15, Ved Vihar  
Thirumalgherry (P.O)  
Secunderabad-500 015  
Andhra Pradesh.

..Applicant

By Legal Practitioner:  
Mr. Tonifia Miranda

vs.

1. Union of India,  
Rep. by its Secretary  
Ministry of Defence  
New Delhi-110 011.

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

3. Adjutant General's Branch  
Integrated HQ of Ministry of Defence (Army)  
West Block III, R.K. Puram  
New Delhi-110 066.

4. EME Records, Secunderabad  
Pin-500 021.

5. The Principal Controller of Defence Accounts  
Office of PCDA (Pensions)  
Allahabad, Uttar Pradesh, Pin-211 014.

..Respondents

By Mr.V.Kadhirvelu, 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 call for the order passed in Second Appeal dated 11.06.2010 preferred by the applicant and the Release Medical proceedings and set aside both and consequently direct the respondents to grant disability pension in favour of the applicant from the date of his discharge, i.e., 01.06.2007 and broadband the said disability in accordance with the letter of Government of India, Ministry of Defence dated 31.01.2001 and for costs.

2. The factual matrix of the applicant's case would be as follows:

The applicant was enrolled in the Indian Army on 16.01.1971 after he was medically examined. He served with utmost sincerity in various parts of the country and in the year 2002, he was posted to Gorkha Record Office and Recruiting Depot in a modified field area. While he was serving in the said Unit, he suffered from "Viral Hepatitis, Gall Bladder Operation and Hypertension" due to tough weather conditions, stress and strain of service and less availability of oxygen. The applicant was brought before the Initial Categorisation Board at 158 Base Hospital and he was placed in S1H1A1P4 (T-4) E-1 category for the disability "Viral Hepatitis and Primary Hypertension" with effect from 29.09.2003. The Board determined that the disability was contracted in service. Attributability was conceded for 1<sup>st</sup> disability and aggravation was

conceded for the 2<sup>nd</sup> disability. Subsequently, the applicant was brought before Recategorisation Medical Board on 15<sup>th</sup> April 2004 at 163 MH for the same disabilities and he was placed at P2 Permanent with effect from 15.04.2004 with the findings that the disabilities are attributable to and aggravated by service conditions. Subsequently, he was once again brought before Recategorisation Medical Board on 29.04.2006 at MH Secunderabad which also similarly opined in respect of attributability and aggravability and assessed the degree of disability of the applicant at 30%. The applicant was scheduled to retire with effect from 01.06.2007 as per his service conditions. Therefore, Release Medical Board was conducted and the applicant was examined by the Release Medical Board. The Release Medical Board however, opined that the disability "Primary Hypertension" was not attributable to nor aggravated by military service which is contrary to the opinion given by the earlier Medical Boards and the applicant was thus denied disability pension on 07.09.2007 by the 3<sup>rd</sup> respondent. The First Appeal preferred against the said order was dismissed on 12.05.2009. Therefore, the applicant preferred Second Appeal before the competent authority which was also rejected on 11.06.2010. The Release Medical Board has not considered the opinion given by the earlier Medical Boards, but had mechanically come to a conclusion that the "Primary Hypertension" was not attributable to or aggravated by military service still it had assessed the degree of disability at 30% and the probable duration was fixed

life-long. The respondents have not considered the directions given by the Hon'ble Supreme Court of India in **Dharamvir Singh's** case and other judgments regarding credence of the opinion of the Medical Boards. The Medical Board's opinion regarding the attributability and aggravability was not followed by the Release Medical Board which is not sustainable. Therefore, the impugned order of rejecting the disability pension in favour of the applicant and the Second Appeals rejecting the claim of the applicant should have been set aside and the opinion of the Release Medical Board should be considered as incorrect and the disability pension may be ordered from the date of discharge of the applicant and it may be broadbanded as per the policy letter of the Government dated 31.01.2001. Therefore, the applicant requests that this application may be allowed accordingly.

3. The objections raised by the respondents would be as follows: The applicant was enrolled in the Indian Army on 16.01.1971 and he retired from the Army service from 01.06.2007 on attaining the age of superannuation in low medical category S1H1A1P2E1. Before he was discharged, he was brought before Release Medical Board held at MH Secunderabad on 03.02.2007 which opined his ID "Primary Hypertenion" with composite degree of disablement at 30% for life and the disability was not attributable to or aggravated by military service. The opinion of the Release Medical Board was given in consultation with the competent medical authority. The assessment of a Medical Board is only a recommendatory in nature

as per 17(b) of Casualty Pensionary Awards to the Armed Forces Personnel, 1982 and is subject to review by competent medical authorities as stipulated in Rules 17(a) and 27(c) thereof. The disability of the applicant was correctly assessed by the Release Medical Board in accordance with the applicable provisions/instructions and it is valid in law. The Release Medical Board is a body of expert persons who physically examine an individual based on the available records, past history and his physical conditions and thereafter decide as to whether his disability is attributable to military service or not. Such an opinion of the Release Medical Board should be given due credence, weightage and value and therefore, the case that permanent low medical category awarded to the applicant would deserve the attributability of the disability of the applicant cannot be sustained. The disability pension was rightly rejected by the competent authority on the basis of the Release Medical Board's opinion and the appeals preferred by the applicant are rightly dismissed. Therefore, the claim of the applicant for the grant of disability pension and for broadbanding the same may be dismissed.

4. On the above pleadings, the following points emerged for consideration in this application.

*(1) Whether the impugned order passed in the Second Appeal dated 11.06.2010 and the previous orders rejecting the disability pension of the applicant are liable to be quashed?*

*(2) Whether the applicant is entitled for disability pension with effect from 01.06.2007 i.e., the date of discharge from service?*

*(3) Whether the opinion of the Release Medical Board dated 03.02.2007 will prevail over the opinion given by Categorisation, Re-categorisation Medical Boards conducted on the applicant respectively on 08.05.2003, 27.11.2003, 22.06.2004 and 31.05.2006 in respect of attributability and aggravability?*

*(4) Whether the applicant is entitled for broadbanding of the disability pension, if granted?*

*(5) To what relief, the applicant is entitled for?*

5. We heard the arguments of Mrs. Tonifia Miranda, learned counsel for the applicant and Mr. V.Kadhirvelu, learned CGSC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for the respondents. We also perused the original documents regarding re-categorisation and Release Medical Boards' proceedings produced by the respondents and also the records submitted by the applicant. We further perused the written submissions filed on either side.

6. **Point Nos.1 to 3:** The factual aspects with regard to the enrolment of the applicant on 16.01.1971 as Sepoy in Indian Army, that he served in various places, that he retired from service on attaining the age of superannuation on 31.05.2006, but in low medical category S1H1A1P2E1 and that he was granted with service

pension for the service rendered by him, are not disputed. Similarly, the applicant sustained disabilities, viz., "CHOLELITHIASIS (OPTD), Viral Hepatitis and Primary Hypertension" during his service period and he was placed in low medical category as per opinion of the Categorisation and Recategorisation Medical Boards constituted for that purpose are also not disputed. Accordingly, Categorisation Medical Boards were convened on 08.05.2003, 27.11.2003, 22.06.2004 and 31.05.2006 respectively for categorising the applicant in the low medical category. The first Categorisation Medical Board was in respect of CHOLELITHIASIS (OPTD) and the said disability was not recategorised in the subsequent Recategorisation Medical Board. However, the onset of the disability viz., "Viral Hepatitis and Primary Hypertension" was found over the applicant with effect from 29.09.2003. As per the opinion of the Recategorization Medical Board dated 27.11.2003, the first ID, viz., Viral Hepatitis was found attributable to service and the second disability, viz., Primary Hypothecation was aggravated by military service. However, no degree of disability was assessed nor was mentioned. Therefore, another Categorisation Medical Board was convened on 22.06.2004 and in the said Medical Board also, the applicant was examined, but opinion in respect of both IDs were not given as not attributable to service, but it was conceded as aggravated by stress and strain of the service conditions. The said temporary low medical category was made permanent in P2 category. Therefore,

another Recategorization Medical Board has been constituted on 31.05.2006 in which the applicant was once again examined and the opinion of the Recategorization Medical Board, dated 22.06.2004 was confirmed in all respects and the degree of disability was given in addition as 30%. The applicant was scheduled to retire on 31.5.2007 and therefore, Release Medical Board was constituted since the applicant was already placed in low medical category. An opinion was given by Release Medical Board after examination of the applicant on 03.03.2007. In the said opinion, the Release Medical Board has recommended the release of the applicant in S1H1A1P2E1 for the disability of Hypertension. The Release Medical Board has assessed the degree of disability at 30% for life. However, it has come to the conclusion that the disability Primary Hypertension was neither attributable to service nor aggravated by military service. The respondents have relied upon the opinion of the Release Medical Board and have rejected the disability pension asked for by the applicant for the said disability. The first appeal and the second appeal preferred against the said rejection were also dismissed by the competent authorities and therefore, the applicant is before us.

7. Now the point for consideration is whether the opinion of the Release Medical regarding attributability and aggravability to military service could be accepted or eschewed in view of the contrary opinions already expressed by the previous Recategorization Medical Boards. The similar question has arisen



before us in a case between **Tummala Amarnath vs. UOI in O.A.154 of 2013** wherein we have come to a conclusion that the earlier Medical Board's opinion should be considered by the Release Medical Board and the Release Medical Board should give its reasons for differing from the opinion of the previous Boards. We also find that the Medical Specialist and President of the Board is in the last Recategorization Board, i.e., dated 31.05.2006 and Release Medical Board, dated 03.02.2007 are the same in both the Boards. Therefore the onus is on the Release Medical Board in giving valid reasons for reaching such difference of opinion from the same set of Members. Admittedly, the Recategorization Medical Boards convened for assessing the category of the applicant have come to the conclusion that Primary Hypertension was attributable to or aggravated by military service since it originated during the service and was due to stress and strain caused in the service. Therefore, it is the bounden duty of the Release Medical Board to explain as to how the Recategorization Medical Board have committed mistake in giving an opinion of attributability and aggravability with regard to the disability Primary Hypertension. On a careful perusal of the Release Medical Board proceedings, we find that no reason has been given for expressing a different opinion contrary to the opinion of the Recategorization Medical Board held on 31.05.2006. It is curious to note that the President of the Release Medical Board held on 03.02.2007, Brigadier Commandant MNG Nair, was the Approving Authority for the Recategorization Medical Board dated

31.05.2006. Brigadier Shri Pradeepkumar, DDMS, HQ, ATNK & K Area, the Approving Authority in the Release Medical Board dated 03.02.2007 was the Authorising Authority in the Categorization Medical Board dated 31.05.2006. Colonel S.P.V. Turlapati was a Member in the Release Medical Board, dated 03.02.2007 and he was the President of the Recategorization Medical Board, dated 31.05.2006. These three officers have participated both in Recategorization Medical Board and Release Medical Board and examined the same applicant but have given different opinion regarding attributability and aggravability. It is strange to see a different opinion without any reason much less any valid reason. This would lead us to presume that the Release Medical Boards' proceedings were given in perverse and in mechanical way. The said mistake is committed by the Release Medical Board cannot be accepted. Such mistake could have been corrected by the authorities concerned when the applicant had sought for the grant of disability pension or when he preferred First Appeal or Second Appeal for the grant of disability pension. We are constrained to observe such a perverse practice occurring regularly while adjudicating the claim of the disability pension payable to the retired Army personnel. The mistake committed by the Release Medical Board could have been set right in various occasions, but it was not done by the respondents. Now, it has become necessary for us to set aside the opinion of the Release Medical Board

regarding attributability and aggravability of the disability, Primary Hypertension of the applicant with the military service.

8. It was argued by the learned counsel for the respondents that credence should be given to the opinion of the Medical Board as laid down in various judgments of the Hon'ble Apex Court including **A.V. Dhamodharan's** case. No doubt credence should be given to the opinion of the Medical Board, if the discretion was perfectly exercised by the Medical Boards. The same rule is applicable to the Recategorization Medical Board dated 31.05.2006 as well as previous similar Boards which gave its opinion that the ID Primary hypertension was due to the stress and strain in the service and it was aggravated by service. The Members of the Release Medical Board were also sitting in the said Recategorization Medical Board who gave the said opinion. We have already discussed and found that the opinion of the Recategorization Medical Boards dated 27.11.2007, 22.06.2004 and 31.05.2006 which gave opinion in favour of the applicant are credible than the opinion given by the Release Medical Board dated 03.02.2007. Therefore, the said principle laid down in **A.V.Damodharan's** case cannot be applied to the opinion of the Release Medical Board dated 03.02.2007, but it is applicable to earlier Recategorization Medical Boards only. For the aforesaid reasons, we are inclined to accept the request of the applicant for the grant of disability pension in his favour from the date of his retirement, viz., 01.06.2007 at 30%. Accordingly, all the three (3) points are decided in favour of the applicant.

9. **Point No.4:** In the earlier paragraphs, we found that the applicant is entitled to 30% of the disability element of pension from the date of retirement, viz., 01.06.2007 which was originally contended by the respondents that the applicant retired from service on superannuation and the benefit of broadbanning as contemplated in the letter of Government of India dated 31.01.2001 would not be applicable to such personnel in view of Paras 4.2 and 8.2 of the said letter. The respondents would further contend that the benefit of broadbanning would apply to those personnel who were invalided out of service and whose service were cut due to invalidation and it would not apply to the personnel who completed their terms of service or retired on superannuation. The said point has been settled in the recent judgement of the Hon'ble Apex Court made in a case between **UOI & Ors. V. Ram Avtar & Ors. (Civil Appeal No.418 of 2012 etc batch, dated 10<sup>th</sup> December 2014)**.It was decided as follows:

*" 4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the aged of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that,*

*on the basis of Circular No.1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.*

*5. We have heard learned counsel for the parties to the lis.*

*6. We do not see any error in the impugned judgment(s) and order(s) and therefore all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.*

*7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension. "*

10. In view of the said judgment, an applicant is entitled for broadbanding as per Para-7.2 of the said letter dated 31.01.2001 despite he retired on superannuation. It is squarely applied to the applicant and accordingly, the degree of disability at 30% is liable to be broadbanded to 50% and the applicant is eligible for the said 50% of disability element of pension since his date of retirement, viz., 01.06.2007. Thus, this point is also decided in favour of the applicant.

11. From the discussions held above, the application filed by the applicant for disability pension at 30% broadbanded to 50% from

the date of his retirement, i.e., 01.06.2007 onwards is to be ordered. The respondents are therefore directed to issue Corrigendum to the PPO already issued for the service pension, towards the grant of disability element of pension from the date of his retirement, viz., 01.06.2007 at 50% for the disability of Primary Hypertension and to pay the arrears of disability element of pension till this date within a period of three months. In default to pay the said arrears or to issue Corrigendum to the PPO, the respondents are directed to pay the said arrears with interest at 9% per annum from this date till the date of realization.

12. In fine, the application is allowed with the directions as indicated above. However, there will be no order as to costs.

Sd/  
LT GEN K. SURENDRA NATH  
MEMBER (ADMINISTRATIVE)

Sd/  
JUSTICE V. PERIYA KARUPPIAH  
MEMBER (JUDICIAL)

16.02.2015  
(True copy)

Member (J) – Index : Yes/No  
Member (A) – Index : Yes/No  
Vs

Internet : Yes/No  
Internet : Yes/No

To:

1. The Secretary  
Ministry of Defence  
New Delhi-110 011.

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

3. Adjutant General's Branch  
Integrated HQ of Ministry of Defence (Army)  
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Allahabad, Uttar Pradesh, Pin-211 014.

6. Mrs. Tonifia Miranda  
Counsel for applicant

7. Mr. V.Kadhirvelu, CGSC  
For Respondents

8. OIC, ATNK & K Area HQ, Chennai.

9. Library, AFT/RBC, Chennai

HON'BLE JUSTICE V. PERIYA KARUPPIAH  
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