

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No. 96 of 2014

Monday, the 23rd day of February, 2015

The Honourable Justice V.Periya Karuppiah
(Member-Judicial)
and
The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

S.Suresh Kumar
Ex Swr No.15485662 W
S/o Thiru S.Sankaran
No.5, Auto Colony, Chidambara Nagar
Tuticorin District, Tamil Nadu – Pin 628 008

...Applicant

By Legal Practitioner:
Mr.S.Pasupathi

vs

1. Union of India rep.by
The Secretary to the Government
Ministry of Defence (Army), New Delhi – 110 011
2. Kavachit Corps Abhilekh
Armoured Corps Records
Pin 900476
C/o 56 APO
3. PCDA, Allahabad
U.P.
4. Military Hospitals
Jodhpur (Raj), Pin-900066
C/o 56 APO
5. The Chief of Army Staff
Army Headquarters, New Delhi

...Respondents

Mr.V.Kadhirvelu, ACGSC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

The applicant Ex/Swr S.Suresh Kumar has filed this O.A. requesting for the call of documents regarding the Invalid Medical Board proceedings dated 20.06.2009 and the impugned order on the 2nd appeal dated 25.10.2013 and to quash the same and grant him disability pension with attendant benefits.

2. Briefly, the applicant was enrolled in the Army on 22.06.2002 as Gunner/Operator in the Armoured Corps and after a service of 7 years, was invalided out of service on medical grounds in low medical category S-5(H3(P)) on 18.07.2009 for the following disabilities:

- (i) Delusional Disorder (F-22) &
- (ii) Bilateral Otosclerosis Stapedectomy (LT) OPTD.

The applicant would state that though the board had assessed his composite disability at 60% for life, he was not granted any disability pension as they opined that the said disabilities are not attributed to nor aggravated by military service. He would state that he underwent training as a gunner in Armoured Corps Centre and School, Ahmed Nagar from 22.06.2002 to 04.10.2003 and was given training on T-72 Tanks and thereafter he, as part of the regiment, was also on training in firing T-90 Tanks from October 2003 to December 2003. During the said training, his left ear got damaged due to unbearable heavy noise. He was treated at Military Hospital at Babina and at MH Jhansi and was diagnosed for the disability Bilateral Otosclerosis Stapedectomy (LT) OPTD and the medical specialist at MH Jodhpur had opined that the onset of the disability was in September 2003 at Ahmed Nagar which was aggravated by firing. The applicant

would also state that he suffered from delusional disorders from 15.10.2005 and he was treated at MH Jodhpur and CH Pune as well as CH Chandimandir. Subsequently, he was invalided out of service on medical grounds. The Invalidment Medical Board held at CH, Chandimandir on 25 June 2009 has recommended his invalidment out of service for the following diseases: (i) Delusional Disorder – 50% for life and (ii) Bilateral Otosclerosis Stapedectomy (LT) Optd – 20 % for life and composite assessment for both disabilities at 60% for life. However, the Board held that the said disabilities were not attributed to or aggravated by military service. Aggrieved, the applicant had appealed to the 1st appeal Board and, subsequently, the second appeal Board. However, his claim for disability pension was rejected. He would further state that when he joined the army, he had no ailments and none were detected and the fact that his injury to the ears was aggravated due to firing while in service as noted by the medical specialist and the fact that the onset of the delusional disorder occurred on 15.10.2005 well after he was in service and due to the stress and strain of service was not taken into consideration while deciding on the attributability and aggravation. He would state that he continues to take medication and produced documents to that fact. The applicant has now come before this Tribunal to call for and quash the impugned orders dated 20.06.2009 and 25.10.2013 issued by respondents; declare both the disabilities as attributable to / aggravated by military service and to grant him disability pension and other benefits after broad banding as is applicable.

3. The respondents have, in their counter affidavit would not dispute the fact that the applicant was enrolled in the Army on 22.06.2002 and that he was invalided out of service on 18 July 2009 under Rule 13 (3) Item III (iii) of Army Rules 1954 as recommended by an Invaliding Medical Board dated 20 June 2009

for the disabilities (i) Delusional Disorder; and (ii) Bilateral Otosclerosis Stapedectomy (Lt) (Optd) and that the applicant had rendered 07 years and 16 days of service. They would also state that the applicant was hospitalized and provided proper medical treatment as well as operated upon for his disease in the ears. Since there was no improvement in his ID, Delusional Disorder, the said Invaliding Medical Board recommended his invalidment out of service under Category S5. They would also not dispute the fact that both the disabilities were assessed for 20% and 50% for life respectively and the composite degree of disability at 60% for life. However, since the Board in its opinion held that the diseases were neither attributable to nor aggravated by military service, the applicant was not entitled to disability pension. He was accordingly invalided out of service on 18 July 2009. His retirement benefits including his gratuity, AFPP fund and AGI benefits were given to him at the time of his invalidment from service. The respondents would also state that though the applicant went on appeal on 12.12.2009, it was rejected by the First Appellate Committee as the Committee held that the Release Medical Board had appropriately held the disability as neither attributable to nor aggravated by military service. They would further state that the applicant also filed his second appeal dated 16.10.2010 to the Defence Minister's Appellate Committee. This appeal was also rejected by the GoI vide their letter dated 25.10.2013 stating that the IDs 'Delusional Disorder' and 'Bilateral Otosclerosis Stapedectomy (Lt) (Optd) are neither attributable to nor aggravated by military service. The respondents would quote the judgment of the Hon'ble Apex Court dated 23.05.2012 in Civil Appeal No.1937/2009 wherein it has been stated that "it is the settled legal position that opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension brushing

aside the opinion of the Medical Board". They would also state that the Apex Court had also held that "in case the Medical Authority record the specific finding to the effect that the disability was neither attributable to nor aggravated by military service, the court should not ignore such a finding for the reason that Medical Board is specialized authority composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability due to military service and the conditions of service resulting in disablement of the individual".

4. In view of the foregoing, the respondents have prayed that the Tribunal may dismiss the OA being devoid of any merit and render justice.

5. We have heard the arguments of Mr.S.Pasupathi, learned counsel for the applicant and Mr.V.Kadhirvelu, learned ACGSC assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing for the respondents and perused all the documents placed before us.

6. Flowing from the pleadings of both counsels, the following questions emerge for consideration:

(a) Whether the said IDs, (i) Delusional Disorder (F-22) & (ii) Bilateral Stapedectomy (LT) OPTD.were attributable to and / or aggravated by military service;

(b) Whether the impugned orders by the Invalid Medical Board dated 20.06.2009 and the order dated 25.10.2013 are sustainable; and

(c) What remedy, if any, the applicant is entitled to?

7. Points 1 and 2: It is not disputed by either side that the applicant joined the Army on 22.06.2002 and was engaged as gunner / operator and that

he had training in Ahmed Nagar and was posted to 6 Armoured Regiment and that he was trained as gunner on Tanks. An examination of the Medical report and Categorisation proceedings would show that the applicant had initially suffered the ID 'Bilateral Otosclerosis Stapedectomy (LT) (OPTD) and the doctors have noted that the onset of the disease was in September 2003 while he was in Ahmed Nagar. For a better understanding, the opinion of Classified ENT Specialist of MH Jhansi appended as part of the Medical Categorisation Board, is extracted below:

"This 21 Yr old SWR is a case of Otosclerosis, stapedectomy (Lt) done.

Patient complaints of Diminished hearing both ears (Lt>Rt)x 01 yr onset & was progressive.

History of tinnitus (Lt) ear x 1 yr

No history of giddiness/earache/headache/ear discharge/intake of ototoxic drugs/trauma ear.

For this patient underwent stapedectomy (Lt) in MH Jhansi on 02 Jan 04, following which his hearing in left ear improved and tinnitus also disappeared.

On Exam: Average Built & nourished

*Vital parameters WNL
Systemic Exam – Clinically NAD"*

The Initial Categorisation Board held that the said ID is neither attributable to nor aggravated by service. In the subsequent Re-Categorisation Board dated 14 August 2006 and dated 18 August 2006, though the Classified Specialists (ENT) have noted "onset 2003; aggravated by firing", the Re-Categorisation Board continued to record the disability as neither attributable nor aggravated by military service.

8. The disease "Otosclerosis Stapedectomy" though known to be genetic / hereditary in nature, it is reasonably established that it can be adversely affected and aggravated by heavy noise. In the extant case, the applicant was a Gunner /

Operator by trade and had undergone training on T-72 Tank and subsequently on T-90 Tank, both of which involving firing of 125 mm Main Gun and other weapon systems on the Tank. And, in view of the observations of Classified Specialists (ENT), as cited above, aggravation due to military service should have been considered by the Release Medical Board. Instead, the Board had merely recorded "Not related to Military Service".

9. As for the second disability, i.e., Delusional Disorder, the date and place of origin has been shown as 15 October 2005 at Jaisalmer and the Graded Specialist (Psychiatry) at MH Jodhpur noted as below:

"This 24 yrs old serving Armd/GNR with 04 yrs of service was admitted to MH Jodhpur on 16 Oct 05 at unit behest with history of abnormal behavior in the form of disobeying orders, argumentative, unprovoked aggression of about 5 days duration, while in outdoor exercise.

xx xx xx xx

There is no past history of head injury, seizures or any psychiatric illness. He is low medical category H3 (Perm) for Bilateral Otosclerosis, (L) Stapedectomy don. He hails from Tuticorin distt of Tamil Nadu, youngest of 04 siblings, financial stressors present. There is no family history of psychiatric illness. Enrolled in Army in 2002 unblemished service so far, social drinker, occasionally smokes, gives history of protected exposure in 2000. AFMSF-10 dt 15 Oct 05 "Aggressive, unbalanced, suspicious, hostile towards authorities, not recommended retention.

Physical examination was unremarkable. Psychiatric evaluation revealed kempt individual, who spoke in detail about his alleged harassment, had systematized delusions of persecution and reference, no hallucinations, no depressive cognitions, impaired judgment, insight and reduced sleep, all in a clear sensorium. Ward observation confirmed above findings. Relevant investigations including NCCT Head, serum T4, TSH did not suggest any organic basis for his symptoms.

He was diagnosed as a case of Delusional disorder (F-22) and was managed with Olanzapine (15 mg/day), psychotherapy and other supportive measures. His delusions gradually became encapsulated and was sent on 08 weeks sick leave on 05 Dec 05. Sick leave period was uneventful and he was complaint with medicines. Presently he is in remission and has adequate insight into his illness. He is motivated to serve further and comply with medicines.

This 24 yrs old serving soldier with about 4 yrs of service, with no post or family history of psychiatric illness, manifested with insidious onset systematized delusions of persecution and reference of more than 3 months duration.

Physical examination, relevant investigations and ward observation did not suggest any evidence of organicity or substance abuse. He responded well to psychotherapeutic intervention and is presently in remission on maintenance medication. Unit report is uncomplimentary and not recommended retention. He is motivated to serve further.

In view of good response to treatment, absence of secondary depressive features, high motivation for further service, he is recommended to be retained in service under psychiatric surveillance in sheltered employment.

Recommended to be placed in low medical category S3 (T-24) and to be reviewed thereafter when due with fresh AFMSF-10."

10. The Medical Board opined that the applicant's said disease, i.e., Delusional Disorder was neither attributable to nor aggravated by military service. Further, he was placed in composite medical category for the two IDs, S3 (T-24), H3 A1P1E1. Subsequent Re-Categorisation Boards conducted on 01 April 2007 at MH Babina and on 25 February 2008 at MH Jodhpur, concurred with the opinion of the initial medical categorization with regard to non-attributability / non-aggravation (NANA) of the said ID. The applicant was brought before Invalid Medical Board on 20 June 2009 at CH, Chandimandir. The opinion of the Classified Specialist (Psychiatry), a member of the Board is extracted for better understanding:

"xx

xx

xx

OPINION

This 27 yr Armd/Swr is a diagnosed case of Delusional Disorder being observed in low medical category since March 2006. Onset of illness was in mid 2005 when he insidiously developed persecutory delusions involving an officer and his wife with whom he was working as a sahayak. The delusions gradually systematized to involve passengers in a train and other unit personnel. He improved with antipsychotics and was retained in service. However subsequent course of the illness has been relapsing. He had a relapse in Sept 06. Currently again hospitalized with a relapse in Nov 08. He believed he was being harassed and persecuted by all unit personnel and his movements were being monitored by video cameras. He was threatening suicide. Psychiatric evaluation revealed him to be agitated, with systematized non-bizarre persecutory delusions, impaired judgment and lack of insight.

Although he has improved with treatment his illness is chronic and course has been relapsing. He has had recurring systematized persecutory delusions involving unit personnel and has repeatedly threatened suicide in the unit. He is a combatant in the

arms. It is unlikely that he will be able to perform his duties efficiently and there is risk of harm to self and others. Further stress and strain of military service can aggravate his illness.

In view of the above, it is recommended that he should be invalided out of service in Medical Category S5."

11. The Invalidment Medical Board opined that both the ID, i.e., (i) Delusional Disorder (F-22) & (ii) Bilateral Otosclerosis Stapedectomy (LT) OPTD are neither attributable nor aggravated by military service by merely stating that "*Not related to Service, hence NANA. Authority para 58 of Chapter VI of Guide to Medical Officers Military Pensions 2008*".

12. The issue of apportioning attributability / aggravation to military service has been dealt with in a catena of judgments by the Hon'ble Apex Court. In essence, the Hon'ble Apex Court has ruled that in the absence of evidence on record to show that the appellant was suffering from the said disease at the time of his acceptance into service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering service and that the deterioration in his health has taken place due to service. In the case of Sukhvinder Singh vs UOI and others, the Hon'ble Apex Court, in Civil Appeal No.5605 of 2010 has further emphasized this aspect, as reproduced below:

XX XX XX XX

*"We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and **unless proved to the contrary** (emphasis supplied by us) to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined."*

13. In the case of Bilateral Otosclerosis Stapedectomy (LT) (OPTD), even if we presume that the Medical Board was of the opinion that the said ID is of genetic / hereditary in nature and, therefore, attributable to military service cannot be conceded, the fact that the applicant was a Tank gunner and the Classified Specialist (ENT) have opined that aggravation due to firing has taken place should have been considered. And in consequence, the benefit of aggravation due to military service should have been conceded. We are of the view that the Release Medical Board was wrong in opining that the ID was not attributable nor aggravated by military service.

14. In the case of ID, 'Delusional Disorder', as noted by all the Medical Boards, the applicant did not have the said disease at the time of his entering the service and had already put in more than 3 years service when he contracted the said ID. Apart from causative factors such as separation, loneliness and heavy stress, it has been established that Ostosclerosis is one of the likely causes for onset / aggravation of Delusional Disorders. (*Reference: Kaplan and Sadock's Synopsis of Psychiatry, 10th Edition, Chapter 14, Page 506*). For better understanding, relevant portion is extracted below:

"Other Relevant Factors: *Delusions have been linked to a variety of additional factors such as social and sensory isolation, socio-economic deprivation, and personality disturbance. The deaf (emphasis supplied by us), the visually impaired, and possibly immigrants with limited ability in a new language may be more vulnerable to delusion formation than the normal population.."*xx xx xx

Risk Factors associated with Delusional Disorders: (Table 14.3-2)

Advanced Age
Sensory Impairment or Isolation
 (emphasis supplied by us)
 Family history
 Social isolation
 Personality features (e.g., unusual
 Interpersonal sensitivity)
 Recent immigration

We are surprised that the Categorisation / Re-Categorisation Boards as well as Release Medical Boards have not at all considered the linkage between Osteosclerosis and Delusional Disorder, but mechanically gave the opinion *"Not related to service, hence NANA"*. Normally, the opinion of the Medical Board should be given due credence and should not be interfered with. However, when the Medical Boards give a mechanical and sketchy opinion, despite evidence available to the contrary, judicial interference would be in order.

15. In the instant case, we are of the view that the opinion of the Medical Board is unreasonable and perverse and, therefore, we are inclined to agree with the counsel for the applicant that both the IDs should have been conceded as aggravated by military service. In fine, both the points were in favour of the applicant.

16. Point No.3: In view of the fact that the Release Medical Board has given a composite degree of disability at 60% for life to the applicant and our findings that both the IDs should be considered as aggravated by military service, the applicant is entitled to disability pension from the date of his invalidment from service. Further, in the light of the fact that he was invalided out of service, in accordance with the provisions of Gol letter dated 31.01.2001, he is entitled to broad banding of disability to 75% for life.

17. Accordingly, the OA is allowed. The applicant is entitled to disability pension at 75% for life from the date of his discharge from service, i.e., 18 July 2009 along with attendant benefits, if any. The arrears shall be disbursed within a

period of 3 months from the date of receipt of this order. In default, an interest of 9% *per annum* is payable from that date. No order as to costs.

Sd/-

Lt Gen K Surendra Nath
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah
Member (Judicial)

23.02.2015

True copy

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

To

1. The Secretary to the Government
Ministry of Defence (Army), New Delhi – 110 011
2. Kavachit Corps Abhilekh
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5. The Chief of Army Staff
Army Headquarters, New Delhi
6. Mr.S.Pasupathi
Counsel for the applicant
7. Mr.V.Kadhirvelu, ACGSC
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8. OIC/Legal Cell,
ATNK & K Area,
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9. Library, AFT/RB, Chennai.

Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.No.96 of 2014

Dated : 23.02.2015