

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No.56 of 2014

Monday, the 19th day of January 2015

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

AND

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

Ex-JC No.438196-W,
Sub Hony/Lt S.Sundaraju
Village and Post-Thillaivilagam
Taluk-Thiruthuraipoondi
District-Thiruvarur
Tamil Nadu.

... Applicant

By Legal Practitioner:
Mr. M.Selvaraj

vs.

1. Union of India
Rep. by the Secretary
Government of India
Ministry of Defence
New Delhi-110 011.

2. The Officer-in Charge Records
Records the Madras Regiment
Pin-900 458, C/o 56 APO.

3. The Principal Controller Defence
Accounts (Pension)
PCDA (P), Droupadi Ghat
Allahabad-211 104.

... Respondents

By Mr.S. Haja Mohideen Gisthi
SCGSC

ORDER

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

1. This is an application in which the applicant prayed for passing an order to direct the respondents to produce the order dated 23.11.2012 on the file of second respondent and to quash the same and consequently to direct the respondents sanction the disability pension in lieu of lump sum compensation with all the arrears of pension and other benefits due to the applicant, as per rules.
2. The factual aspects in the application would be as follows: The applicant was enrolled in the army as Infantry soldier on 03.08.1979 and he was promoted to various ranks and finally he was granted Honorary Lieutenant. While he was in service he was engaged in operation on the Line of Control in Jammu and Kashmir in war-field area and there he sustained gunshot wound as a result of border skirmishes of Pakistan soldiers. The injury was examined and the disability was assessed at 50% by the Medical Board which was also declared as attributable to military service. The applicant was entitled to the sanction of disability pension or lump sum compensation as per rules. The applicant who was unaware of the provisions of Pension Regulations for the Army and without proper information, he was made to sign in some papers which resulted in payment of lump sum

compensation of Rs.97,578/- for disability. Subsequently, the applicant was discharged on superannuation and on his retirement, he was receiving only service pension. If really the applicant was given legal advice to claim disability pension instead of lump sum compensation for the disability suffered in the war-field, the applicant would not have signed for the payment of lump sum compensation. The disability pension is more beneficial and convenient for the applicant instead of lump sum compensation. Therefore, he made a representation to the respondents on 24.10.2012 claiming for disability pension by willing to pay the amount of compensation he had received with simple interest. The said request of the applicant was rejected and the respondents passed the impugned order dated 23.11.2012 denying the disability pension. The payment of disability pension will be beneficial to the applicant and the respondents will not be at loss, since the applicant is willing to return the lump sum compensation received by him with simple interest. Therefore, the applicant would request this Tribunal to quash the order of rejection of the representation and consequently to direct the respondents to sanction disability pension on the disability of the applicant after taking back the lump sum compensation re-imbursed by the applicant. Thus the application may be allowed.

3. The objections raised in the reply-statement would be as follows:
The enrolment of the applicant in the Army and his retirement on superannuation are not disputed. Similarly, the injury caused to the applicant was due to enemy fire which was attributable to military service and was assessed at 50% for disability for life are also not denied. The applicant was given a sheltered appointment by the Commanding Officer till the applicant completed the terms of engagement. As per the letter of Government of India, Ministry of Defence dated, 07.03.1991 for the injuries sustained in the war on or after 01.01.1986, war injury lump sum compensation or war injury pension would be granted to the injured personnel and for that they ought to have given their option within three months from the date of injury or within six months from the date of issue of the letter dated 07.03.1991 and on satisfying the requirements, the injured personnel would be given a lump sum compensation for the injury sustained by them. In the case of the applicant, an amount of Rs.97,578/- was paid to him vide PCDA letter dated 03.08.1999 based on the option signed by him. The applicant was aware and clearly explained and therefore, he accepted the war injury lump sum compensation instead of war injury element and the same was passed by PCDA in its letter dated 03.08.1999. As per the ingredients of the letter dated 07.03.1991, the option once exercised is final and the claim of the

applicant for disability pension is not maintainable, in view of the lump sum payment of compensation. The applicant received the lump sum compensation in the year 1999 and he has come forward with the claim of re-imbursement with simple interest in lieu of the payment of disability pension after a long gap of more than 6 years and 8 months. The applicant who enjoyed the benefit is also estopped from claiming disability pension instead of the lump sum compensation already paid to him. Therefore, the application may be dismissed.

4. The respondents filed an additional reply statement reiterating the facts mentioned in the reply statement. It is also further averred that the revised policy issued by the Government of India, Ministry of Defence in its letter dated 31.01.2001, one time amount of compensation paid cannot be replaced with disability pension and the disability pension once paid on the basis of the option made by the applicant is final.

5. The further case of the applicant as stated in the rejoinder would be as follows: The respondents failed to follow the procedure in MOD letter dated 07.03.1991 since the casualty happened on 10.01.1988, to which an option should have been exercised within six months from the date of the letter dated 07.03.1991. The Acceptance Certificate dated 07.05.1997 was obtained after a long delay, which would show that the respondents did not follow the proper procedure. When there

is a patent violation of the rules contemplated in the letter dated 07.03.1991, the payment made on that basis should be set aside, since it ought to have been presumed that there was no option exercised within the time limit. Therefore, the application should be allowed.

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

1. Whether the impugned order dated 23.11.2012 be set aside as not sustainable?

2. Whether the applicant is entitled for disability pension after reimbursing the sum of Rs.97,578/- with nominal interest, received towards the war injury lump sum compensation?

3. To what relief the applicant is entitled for ?

7. We heard Mr. M.Selvaraj, learned counsel for the applicant and Mr. S.Haji Mohideen Gisthi, learned SCGSC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for the respondents. We have also perused the records produced on either side.

8. **Point Nos.1 and 2:** The facts that the applicant was enrolled in Madras Regiment on 03.08.1979 and was discharged from service on 01.09.2007 for 28 years and 29 days of qualifying service as per

terms of engagement; that he sustained severe injury (gunshot wound in right hand) due to enemy fire (Battle Casualty) on 10.06.1988 while serving with 28 Madras in field area (J&K), that the injury was classified as attributable to military service and was assessed at 50% of disability for life and was placed in low medical category CEE (Permanent) and was willing to continue in service despite his medical categorization and sheltered appointment was provided by the CO till he completed the terms of engagement are admitted by both parties.

9. However, the grant of war injury lump sum compensation as per the Policy of the Government of India, Ministry of Defence in its letter dated 07.03.1991 was stated to have been granted to the applicant without explaining him the full particulars before giving option to receive the same. According to the applicant, the option was exercised by him without any information about the non-eligibility for disability pension on his retirement. Such payment of lump sum compensation of Rs.97,578/- was given to him for the disability of 50% sustained by applicant in a gunshot injury in the Line of Control, Jammu and Kashmir. Therefore, there is no dispute about the receipt of the said amount by the applicant towards the lump sum compensation for the war injury. Similarly, the said war injury was indisputably attributable to military service. Furthermore, the fact

that the applicant sustained the said injury in the Line of Control, Jammu and Kashmir on 10.06.1988 is also not disputed.

10. The learned counsel for the applicant would submit in his argument that lump sum compensation given to the applicant was based on an Acceptance Certificate obtained on 07.05.1997 from the applicant which is against the requisites of the Policy Letter dated 07.03.1991. He would highlight in his argument that the option should be exercised by the applicant within three (3) months from the date of sustaining of any war injury or within six (6) months from the date of the Policy Letter dated 07.03.1991, but the Acceptance Letter was dated 07.05.1997 which is beyond six (6) months period would disclose the illegality of the entire transaction. He would also submit that the applicant is entitled to a better relief of payment of disability pension from the date of his retirement than the lump sum compensation of payment of Rs.97,578/-. Therefore, he would request us that the disability pension may be directed to be paid in favour of the applicant after the applicant is directed to reimburse the lump sum compensation of Rs.97,578/- with nominal interest.

11. The learned Central Government Standing Counsel would submit in his argument that the provisions of the letter dated 07.03.1991 have been complied with strictly and an Option Certificate for the payment of lump sum compensation in lieu of disability element

pension was obtained from the applicant on 06.06.1991 itself and the Acceptance Certificate referred to by the learned counsel for the applicant was towards the confirmation of the Option Certificate already executed by him. He would also submit that the applicant is not an illiterate person to opt for a lump sum compensation without knowing the consequences within six months from the date of the Policy Letter dated 07.03.1991 and had also accepted on 07.05.1997 through his Acceptance Certificate and had received the lump sum compensation of Rs.97,578/- and enjoyed the fruits of the said compensation. The applicant had approached the Court after a long gap of more than 13 years, with the claim of disability pension despite he had retired from service in the year 2007. He would also submit that the claim of the applicant is not sustainable in the facts and circumstances of the case.

12. Considering the submissions of both sides, the fact that the applicant sustained war injury on 10.06.1988 in the field area of J & K due to a gunshot in the border skirmishes of Pakistan soldiers has not been disputed. The Option Certificate issued under the Policy Letter dated 07.03.1991 was executed by the applicant on 06.06.1991 which was countersigned by Commanding Officer on 15.06.1991 within six months from the date of the said letter as stipulated therein. In the said Option Certificate, the applicant opted to draw lump sum

compensation in lieu of war injury element, foregoing the war injury pension at the time of his subsequent retirement/discharge. He had also confirmed that the option exercised once will be final. On a careful reading of the Policy Letter dated 07.03.1991, we found that the option once exercised will be final. Para-5 of the said letter would run as follows:

"Once the compensation in lieu of war injury pension due to disability for life has been paid, there shall be no further pensionary entitlement on account of such a disability at the time of retirement/discharge from Armed Forces."

13. This would clearly show that once the compensation of war injury pension was paid for the disability sustained for life, it would not subsequently enable the applicant for the payment of disability element of pension at the time of retirement/discharge. In Para-9 of the said letter, it is categorically mentioned that the provisions of that letter regarding injuries occurred on or after 01.01.1986 would be attracted. When we perused the Acceptance Certificate dated 07.05.1997 produced as Annexure R.II, that would not be an Option Certificate but that was an acceptance given subsequently towards the finding on the assessment of disability compensation arrived by Medical Board on 07.05.1997. In the said Certificate also, it has been referred that the applicant was aware and accepted that once the lump sum compensation is paid, he would not be entitled further for the disability element of pension at the time of his release or retirement.

Having confirmed on several occasions regarding the position of rules that the applicant would not be paid disability element of pension at the time of his retirement, he received the lump sum compensation of Rs.97,578/- during his tenure in service and was continuing in his sheltered appointment till his term of service was over in the year 2007. The applicant is also a recipient of service pension having retired in the year 2007 and he kept quiet till 2012, but has come forward with the claim that his lump sum compensation be received back and disability pension be granted since it is beneficial to him. The said stand taken by the applicant is clearly barred by his option which was exercised in the year 1991. The said option was not illegally obtained from him, but was given by him, in accordance with the provisions of the said letter dated 07.03.1991.

14. Viewed from any angle, we do not find any infirmity in getting an option for payment of lump sum compensation in the year 1991 from the applicant towards the payment of lump sum compensation paid to the applicant towards war injury sustained by him. Therefore, the order dated 23.11.2012 in refusing to grant disability pension is not assailable. Therefore, the claim of the applicant for disability pension on his war injury is found unsustainable in view of the fact that lump sum compensation was granted after following the

provisions contained in Government of India letter dated 07.03.1991. Accordingly, both the points are decided against the applicant.

15. In view of the discussions held above and the decision reached that the applicant is not entitled to any relief asked for by him, the application filed by him for the grant of disability element of pension from the date of his retirement with the direction to the applicant to repay the lump sum compensation received by him with nominal interest is liable to be dismissed.

16. Before parting with the case, we want to emphasize that the service rendered by the Army is in the nature of protecting the nation from the aggression. No doubt during emergency or in the wake of any aggression from the neighbouring country, the nation needs the services of the Army personnel and accordingly the applicant and like personnel fought for our country to protect our nation. While doing so, they sustain injuries or even die for the cause of our country and their sacrifices are being compensated by the Government by providing various measures including payment of lump sum compensation, war injury pension, etc. In this case or in any similar case, the lump sum compensation paid to the applicant for sustaining a war injury might be considered sufficient at the time of granting the lump sum compensation. But on comparison with the payment of war injury or disability pension granted with further amending

provisions like broadbanding etc., the earlier benefit of payment of lump sum compensation would not be beneficial to the extent of grant of war injury pension on retirement. We feel that such payment of lump sum compensation should be made equal to the payment of war injury pension payable to the Army personnel on their retirement. Therefore, we wish to recommend the Government to frame adequate policy or rules appropriately for payment of war injury pension to the Army personnel who sustained war injuries and received lump sum compensation like the applicant herein, after the lapse of reasonable period from the date of their retirement, say, 5 or 10 (ten) years to get eligibility for war injury pension. We believe that this would certainly be a good gesture to the sacrifices rendered by such injured Army personnel for the sake of our nation and recommend the Government to amend the said rules in favour of the war wounded, at an early date. The issue may also be brought to the notice of the VII Pay Commission.

17. In fine, the application is dismissed with the above observations and recommendations. No order as to costs.

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

Sd/
JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)

19.01.2015
(True copy)

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

Internet : Yes/No
Internet : Yes/No

vs

To:

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

2. The Officer-in Charge Records
Records the Madras Regiment
Pin-900 458, C/o 56 APO.

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PCDA (P), Droupadi Ghat
Allahabad-211 104.

4. Mr. M.Selvaraj
Counsel for applicant.

5. Mr. S. Haja Mohideen Gisthi
For respondents.

6. OIC, Legal Cell, ATNK & K Area, Chennai.

7. Library, AFT, Chennai.

8. Jt. Secretary
Dept. of Ex-Servicemen Welfare
Ministry of Defence,
5A, South Block, New Delhi-110 011.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

O.A. 56 of 2014

Dt: 19.01.2015