

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No. 59 of 2014

Tuesday, the 20th day of January, 2015

The Honourable Justice V.Periya Karuppiah
(Member-Judicial)

and

The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

A.Savarimuthu
Son of Ashirvatham
(formerly Havildar, No.1260923)
Regt of Arty/1612/161 Fd Regiment
Now residing at No.6/109 'A' Type
SIDCO Nagar, Villivakkam, Chennai – 600049

...Applicant

By Legal Practitioners:
M/s R.Veeramani and N.Easwaran

vs

1. Union of India
Represented by Secretary to Government
Ministry of Defence, New Delhi – 110 011
2. The Chief of Army Staff
Army Headquarters, New Delhi – 110 011
3. The Chief Controller of Defence Account (Pension)
Allahabad
4. Director General of Artillery (Arty 3)
General Staff Branch, Army Headquarters
DHQ PO, New Delhi – 110 011
5. Record Officer
Topkhana Abhilaka, Artillery Record
Nasik Road Camp

...Respondents

Mr.N.Ramesh, ACGSC

ORDER

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

The applicant Ex Hav A.Savarimuthu filed this Original Application challenging the denial of disability pension by the respondents *vide* impugned order dated 04.01.1999 with a plea to quash the said order and to grant him disability pension with broad banding, as applicable.

2. Briefly, the applicant was enrolled in the Army on 01.12.1973 and he would state that at the time of his joining the Army, he was medically examined and was not found suffering from 'hypothyroidism' and there is no history of such a disease in his family. He would further submit that he was admitted at MH, Golkonda, Hyderabad in April 1985 for hypothyroidism when it was first noticed. He would also state that he had previously served in high altitude / difficult / uncongenial areas such as Sikkim, Tripura and J & K. He would submit that service in these hazardous areas in an inhospitable, inclement weather has caused and contributed hypothyroidism. The applicant would also claim that only after he was admitted in the MH in Hyderabad, hypothyroidism was noticed and he was placed in Category CEE (Permanent) for 'hypothyroidism' with effect from 30 January 1989. He was given a sheltered appointment in Artillery Training Centre in Hyderabad. He would claim that he was invalided out of service at the young age of 34

years on 31.10.1989. At the time of invalidment, the medical board had merely recorded that the ID is constitutional and is unrelated to service. Even though he was in receipt of service pension, he was not granted any disability pension despite the fact that the medical board had fixed the degree of disability at 20% for 2 years. Though he had made his first appeal, it was rejected by the Appellate Board vide their letter dated 07.06.1990. He would further state that he filed a writ petition in the High Court of Madras seeking appropriate directions with regard to grant of disability pension. The Hon'ble High Court of Madras vide its order dated 27.08.1998 had directed the respondents to consider his representation within a period of 12 weeks. However, the competent authority had again rejected his application stating that the invaliding disease has been certified to be neither attributable to nor aggravated both by the Release Medical Board and the Appellate Medical Authority and that there is no causal connection between the disablement and military service. In these circumstances, the applicant had submitted an application on 10.06.2013 seeking to review and reconsider his case.

3. The respondents would state that the applicant was enrolled in the Army on 01.12.1973 and that he was detected with suffering from 'Hypothyroidism (244-V67) in 1985 and was placed in Medical Category CEE (Permanent) with effect from 30.01.1989. Since his further retention in service was not considered necessary, as per Army Order 46/80 read in

conjunction with Army Rule 13 (2A) and since the strength of his trade / category had exceeded the sanctioned strength and was accordingly, discharged from service with effect from 31.10.1989 under item III (v) of the table annexed to Army Rule 13 (3). Prior to the discharge from service, the applicant was brought before the Release Medical Board on 26 September 1989 in Military Hospital. The Board had opined that his disability was neither attributable to nor aggravated by military service, being a constitutional disorder unrelated to military service and the degree of disability was assessed at 20% for 2 years. The applicant's application for disability pension was rejected by the PCDA (P), Allahabad *vide* their letter dated 07 June 1990. The applicant did not prefer an appeal; however, he had filed a writ petition before the Hon'ble High Court Judicature at Madras for grant of disability pension. The Hon'ble Court disposed the case with direction to the authorities to 'consider the representation of the applicant dated 31.07.98 and pass orders within a period of 12 weeks. Accordingly, the competent authority, in compliance of the Court order, had considered the representation of the applicant and rejected the same in terms of para 173 of Pension Regulation for the Army 1961 (Part-I) as the disability from which the applicant suffered during his service was viewed as neither attributable to nor aggravated by military service. The respondents would further state that the disease 'hypothyroidism' in its quiescent stage cannot be detected at the time of Recruiting Medical Examination unless an individual exhibits signification

to this effect and it being a constitutional disease, varying climatic conditions and terrain do not contribute to nor is an aggravating factor.

4. We have heard the arguments of M/s R.Veeramani and N.Easwaran, counsel for the applicant and Mr.N.Ramesh, learned ACGSC, assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing for respondents and perused all documents made available to us.

5. The respondents have produced before us the medical documents relating to the Release Medical Board proceedings held at 166 MH, on 26.09.1989. We note from the medical documents that the applicant, at the time of discharge from service, was suffering from 'Hypothyrodism' (244-V-67) and the percentage of disability was recorded at 20% and probable during for 2 years. The probable duration for the degree of disability was over by 25.09.1991. Since no Review Medical Board was conducted on the applicant thereafter, it has become necessary for us to assess the present medical disability condition of the applicant before we adjudicate any further. Therefore, we are of the considered view that the applicant be referred to a Reassessment Medical Board to assess the present medical condition of the applicant for the said disability.

6. In view of the foregoing, the respondents are hereby directed to constitute and convene a Re-Assessment / Review Medical Board at Military Hospital, Chennai for the examination of the applicant towards the aforesaid purpose as expeditiously as possible and to inform the applicant

the date and venue for his presence and to submit the report of the said Medical Board proceedings within two weeks, thereafter. The Medical Board will give its opinion only on the present medical condition of the applicant for the said disease, the degree of disability if any and probable duration of the degree of disablement. The respondents are directed to place the said Re-Assessment / Review Medical Board proceedings before us on 02 March, 2015.

Sd/-

Lt Gen K Surendra Nath
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah
Member (Judicial)

20.01.2015

True copy

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

To

1. Secretary to Government
Ministry of Defence, New Delhi – 110 011
2. The Chief of Army Staff
Army Headquarters, New Delhi – 110 011
3. The Chief Controller of Defence Account (Pension)
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4. Director General of Artillery (Arty 3)
General Staff Branch, Army Headquarters
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5. Record Officer
Topkhana Abhilaka, Artillery Record
Nasik Road Camp
6. The Commandant
Military Hospital, Chennai
7. M/s R.Veeramani and N.Easwaran
Counsel for applicant
8. Mr.N.Ramesh, ACGSC
For respondents
9. OiC, Legal Cell,
ATNK & K Area,
Chennai-600009.
10. 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.59 of 2014

Dated : 20.01.2015

