

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.21 of 2013

Thursday, the 4th day of July, 2013

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

AND

THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA
(MEMBER - ADMINISTRATIVE)

No 1144932 EX GNR J George
Door No 20-3-81
Royalavari Veedi, Yarramitta
Near Leela Mehal, Tirupati
PIN CODE 517501

... Applicant

By Mr. S. Biju,
Amicus Curiae/Counsel for applicant

Vs.

1. The Secretary,
The Government of India,
Ministry of Defence (Army)
South Block, DHQ Post Office,
New Delhi - 110 011.
2. Officer-in-Charge
Artillery Records
APS PIN 908 802
C/o 56 APO

... Respondents

By Mr. B. Shanthakumar, SPC

ORDER

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

1. This application is filed by the applicant seeking for conversion of the Ordinary Service Element of Disability Pension sanctioned by PCDA (P), Allahabad, in PPO No D/0227/2011 dated 24.10.2011, into a War Injury Service Element of Disability Pension and also to sanction 50% of the War Injury Disability Pension and to arrange for getting ECH Card for the applicant and for costs.

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

The applicant joined the Indian Army on 8.11.1956 and was invalided out of service on medical grounds on 18.9.1963. The applicant was posted to NEFA (North Eastern Frontier Area) which was an operational area due to Chinese aggression. The applicant's battery, namely 86 Field Battery of 6 Field Regiment was destroyed by enemy's aggression and the applicant was caught by the enemy troupes, man handled, tortured and half buried in snow and they hit the applicant on his head and arms, with the rifle bayonet and left him in the snow presuming him as dead. The applicant regained consciousness and found himself at Army Medical Camp and was given medical treatment. He was also placed under medical category EEE on

18.9.1963 and was discharged from service. The invalidation was due to the war injury sustained in war service. The applicant approached Armed Forces Tribunal, Regional Bench, Chennai, and got sanction of his disability pension with effect from 22.3.2008, as per Order made in O.A.No.15 of 2011. The applicant is seeking for war injury pension since his disability was caused in the war injury, which has to be rounded off with effect from 22.3.2008. Accordingly, the application may be allowed.

3. The objections raised by the respondents would be as follows :-

The facts that the enrolment of the applicant in the Indian Army was on 8.11.1956 and he was invalided out of service on 18.9.1963, are not disputed. The disability pension claim of the petitioner for the disability of 'Psychoneurosis' (315) was rejected by the PCDA (P), Allahabad, on 4.10.1963, since his disability was neither attributable to nor aggravated by war service. The applicant filed an application O.A.No.15/2011 before this Tribunal for the grant of disability pension, which was allowed on 5.5.2011 with the following directions :-

"the applicant is entitled to disability pension as per rules from 22 Mar 2008. The respondents are directed to provide necessary medical aid/treatment to the applicant at Military Hospital, Chennai, taking into consideration his advanced age.

For compliance eight weeks (to act in a war footing). Failure in compliance will entail the applicant to claim 12% interest per annum for the arrears."

4. As per the Order passed therein, the competent authority accorded Government sanction, on 30.8.2011 granting disability pension to the petitioner at 20% with effect from 22.3.2008 along with 12% interest p.a. on arrears. The PCDA (P), Allahabad, issued PPO No.D/227/2011 dated 24.10.2011 granting disability pension consisting of service element at Rs.3500/- per month with effect from 22.3.2008 for life and disability element at 20% for life along with interest at 12% p.a. on the arrears due. Thus, the Order passed by Hon'ble AFT in O.A.No.15/2011 dated 5.5.2011 was fully complied. However, the applicant has come forward with this application in order to convert the said disability pension into war injury pension and also seeking to broad band 20% disability to 50% disability, which are not sustainable. The rounding off benefits were not extended to pre 1996 retirees. Even otherwise, the applicant was not receiving disability pension as on 1.7.2009 and, therefore, he was not eligible for grant of rounding off benefits. As regards the grant of ECH Card, the applicant has to approach the nearest Station Headquarters for the issue of the Card. Therefore, the applicant is not entitled to any relief as asked for by him. Therefore, the application may be dismissed.

5. On the above pleadings, the following points emerged for consideration :-

- 1) Whether the applicant is eligible for war injury disability pension after converting the disability pension as ordered by this Tribunal ?
- 2) Whether the applicant is entitled to 50% of the ordinary war injury disability pension ?
- 3) To what relief the applicant is entitled for ?

6. Heard Mr. S. Biju, Amicus Curiae, appearing for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel, assisted by Captain Vaibhav Kumar, Learned JAG Officer for the respondents.

7. According to the submission of the Learned Counsel for the applicant, the applicant was invalided out of service in September, 1963, and was denied disability pension even though he suffered injuries at the hands of aggressive Chinese troupes and, therefore, he approached this Tribunal in O.A.No.15/2011 for the grant of disability pension. He would also submit that this Hon'ble Tribunal had ordered for the grant of disability pension in its Order granting the disability after broad banded to 50%. However, the respondents have sanctioned for 20% of the disability pension only quoting the reason that the applicant was not receiving disability pension during

2009. He would also submit that the said sanction of 20% disability pension was against the tenor of the Order passed by this Tribunal and 50% disability pension should have been ordered in obedience to the Order of this Tribunal. He would also insist in his argument that the injury sustained by the applicant was due to his participation in the war, which should be converted into war injury pension.

8. Per contra, the Learned Senior Panel Counsel would submit in his argument that the applicant was found eligible to get disability pension and this Tribunal has ordered for only 20% of the disability in its Order. He would also submit that the letter of the Government of India, Ministry of Defence, produced in Annexure R-VII dated 19.1.2010 would stipulate that the persons invalided out of service even prior to 1.1.1996 should have been granted disability pension as on 1.7.2009. Therefore, he would submit that the applicant was not entitled to the rounding off benefit as he was not receiving any disability pension and, therefore, this Hon'ble Tribunal did not grant the rounding off benefit at 50% despite the Hon'ble Administrative Member opted for the grant of 50% of the disability pension. He would also submit that in the earlier Order, this Hon'ble Tribunal had considered the nature of injury and had granted disability pension alone and, therefore, it should have been deemed that the nature of injury as war injury was not accepted by the Tribunal. He would also submit that the applicant has also

not put forth any pleading in the earlier application for the grant of disability pension for the cause war injury. He would further submit that the service records of the applicant were destroyed as per rules and, therefore, the applicant's claim cannot be sustained. The ECH Card would be granted if the applicant is approaching the appropriate centre at his District and, therefore, no relief could be granted as asked for by the applicant and the application be dismissed.

9. We have given anxious thoughts to the arguments advanced on either side.

10. **Points No.1 & 2:** The enrolment of the applicant in the Indian Army and his discharge on invalidation during 18th September, 1963, are not disputed. On rejection of the disability claim, the applicant approached this Tribunal in O.A.No.15/2011 for the grant of disability pension and the Order passed by this Tribunal granting disability pension is produced in Annexure-A4. In the said application, the applicant had sought for the grant of disability pension which was seriously disputed by the respondents. However, this Tribunal had considered the pleadings of the applicant that he was affected by Psychoneurosis (318) due to the injury sustained during the military service and the disability pension was granted. For better appreciation, the operative portion of the Order necessarily be extracted as below :-

"We also agree with this point raised by the learned Central Government Counsel and hold that the applicant is entitled to disability pension only from three years prior to the date of filing of this application ie., from 22.03.2008, as per Rules. Point is answered accordingly.

7(b) While concurring with this order, My Learned Brother Lt. Gen (Retd) S.Pattabhiraman, Administrative Member, adds the following_

"the percentage of disability should be at 50%, which is the minimum as stipulated vide para 7.2. of the Government of India, Ministry of Defence, letter No.1(2)/97/I/D (pen-C), dated 31st January 2001.

8. In fine, the application is allowed and the impugned order is set aside and the applicant is entitled to disability pension as per Rules from 22.03.2008. The respondents are directed to provide necessary medical aid / treatment to the applicant at Military Hospital, Chennai, taking into consideration his advanced age. For compliance eight weeks (to act in a war footing). Failure in compliance will entail the applicant to claim 12% interest per annum for the arrears. No costs."

11. On a careful perusal of the said Order, we can understand that this Tribunal had come to the conclusion that the applicant was entitled to disability pension for the disability of 'Psychoneurosis', which was found attributable to or aggravated by military service. While finding that the disability aggravated by or attributable to military service, it was not found that those injuries were sustained due to the torture and hitting of the head of the applicant by the Chinese troupes with the rifle bayonet. Admittedly, the service records of the applicant were destroyed as per Rules made in Rule-595 of Regulations for the Army, 1987 (Revised Edition). If really the records pertaining to applicant were available, the facts for the cause of injury could have been ascertained. In the said circumstances, it cannot be said that the injuries caused the disability were sustained in war, but during military service. However, this Tribunal on an earlier occasion in O.A.No.15/2011 had come to the conclusion of granting disability pension alone. If really it was convinced that disability was sustained in the Chinese war, it should have granted war injury pension. While discussing the fact regarding the sustaining of the injuries, it had referred to the buried in snow or being hit on his head with the rifle bayonet, but it had not come to the conclusion that it was also a war injury. Therefore, the request of the applicant to convert the disability pension into a war injury disability pension cannot be ordered. This Tribunal had already discussed the same set of facts and came to a conclusion that the applicant is eligible only for disability

pension. Therefore, it cannot be reagitated in this application.

12. The respondents, as per the Orders passed by this Tribunal in O.A.No.15/2011, had granted 20% of the disability pension for the reason that the applicant was not receiving any disability pension as on 1.7.2009 and, therefore, the broad banding benefit did not accrue to the applicant. Whether the said reason given by the respondents is sustainable, is the question. This Tribunal had directed the respondents to pay disability pension in para-7 of its Order dated 5.5.2011 in O.A.No.15/2011. In the next paragraph, namely 7(b), the Hon'ble Administrative Member suggested to raise the percentage of disability at 50% as per the policy letter of the Government of India, Ministry of Defence, dated 31.1.2001. The said suggestion/decision reached by the Administrative Member was not refused by the Judicial Member. Nor was it referred to a separate Bench for confirmation. In the said circumstances, it is deemed that the suggestion/decision of the Administrative Member was accepted by the Learned Judicial Member and the disability pension granted by this Tribunal at the operative portion of the Judgement was at 50%. The said tenor of the Judgement has not been understood by the respondents, but they sanctioned only 20% of the disability pension to the applicant, which is not correct.

13. Once this Tribunal has granted 50% of the disability pension, it should have been complied with by the respondents by sanctioning the disability pension at 50% to the applicant. The applicant is already aged more than 80 years, who had rendered service to the nation at the time of Chinese aggression. He is a very senior citizen of our country. In the said circumstances, the respondents ought to have exercised much care in implementing the Orders passed by this Tribunal in O.A.No.15/2011 dated 5.5.2011. Since the respondents had failed to implement the Order of this Tribunal as stated above, it has become necessary to issue direction once again to them by allowing the application towards the grant of 50% of the disability pension to the applicant as sought for by him by way of clarification. Accordingly, both the points are decided.

14. **Point No.3:** In view of our discussion held above, we are inclined to direct the respondents to pay the disability pension at 50% for the disability sustained by the applicant. It is made known to us that 20% disability pension alone has been paid to the applicant and a PPO has been issued accordingly. Therefore, it has become necessary for us to issue another direction to convert the 20% disability pension into 50% disability pension and to pay the difference of disability pension amount from the date of the payment, namely 22.3.2008 till this date with 12% p.a. interest and to continue to pay the disability pension at 50% in future. The PPO already

issued should also be properly amended for 50% within a period of three months. ECH Card shall also be issued to the applicant within the aforesaid time limit. In default to comply, the applicant is also entitled to an additional interest at 4.5% p.a. on the arrears apart from 12% p.a. till the date of such payment. The claim of the applicant for conversion of disability pension into war injury pension is not accorded. The application is ordered to that extent as indicated above. No order as to costs.

15. Mr. S. Biju, Advocate, appointed as Amicus Curiae, shall be paid with a fees of Rs.5000/- towards his service by the Tamil Nadu State Legal Services Authority, Chennai.

Sd/-
LT GEN (Retd) ANAND MOHAN VERMA
MEMBER (A)

Sd/-
JUSTICE V. PERIYA KARUPPIAH
MEMBER (J)

04.07.2013
(True Copy)

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

Internet : Yes / No
Internet : Yes / No

NCS

To,

1. The Secretary,
Government of India,
Ministry of Defence (Army)
South Block, DHQ Post Office,
New Delhi-110 011.
2. Officer-in-Charge
Artillery Records
APS PIN 908 802
C/o 56 APO
3. Mr. S. Biju,
Amicus Curiae/Counsel for applicant.
4. Mr. B. Shanthakumar, SPC
Counsel for respondents.
5. Tamil Nadu State Legal Services Authority,
High Court Campus,
Chennai.
6. OIC, Legal Cell (Army),
ATNK & K Area,
Chennai-600009.
7. Library, AFT, Chennai.

**HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN (RETD) ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)**

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