

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.33 of 2013

Wednesday, the 3rd day of July 2013

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

AND

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

R. Margan
Ex Havildhar 14460301
Seduvalai, Vellore
North Arcot, Tamilnadu.

..Applicant

By Legal Practitioners:
M/s. D. Bakthavatsalu
and P.Manikannan.

vs.

1.Union of India represented by
its Secretary, Ministry of Defence
New Delhi.

2. The President
Medical Board
No.167, Military Hospital
C/o 56 APO.

3. The Commanding Officer
Topkhana Abilesh
Nasik Road Camp
Pin 422 102
APS PIN 908802.

.....Respondents

By Shri B.Shanthakumar, SPC
Assisted by Cap Vaibhav Kumar
JAG Officer.

ORDER

(Order of the Tribunal made by
Hon'ble Lt Gen (Retd) Anand Mohan Verma,
Member-Administrative)

1. This application has been filed requesting for disability pension along with 12% interest and for passing such other or further orders as may deem to be fit.

2. The petitioner was enrolled on 27.4.1979 and was discharged from service on 1.11.1997 after 18 years of service under the provisions of Army Rule 13(3)(III)(v). He is in receipt of his service pension at the time of discharge from service. He was brought before Invaliding Medical Board which opined that his ID CNS (INV) Seizures was neither attributable to nor aggravated by service and consequently he was not granted any disability pension, in accordance with Para 173 of Pension Regulations for the Army 1961.

3. The petitioner through his affidavit and arguments of his learned counsel Mr. D.Bakthavatsalu pleaded that during training at Binaguri, he was suffering from severe head ache and approached a civil medical practitioner who advised him not to undergo heavy duty and avoid working in hot sun. The petitioner provided the prescription to his superiors who doubted the integrity of the petitioner and ill-treated him following which the petitioner did not eat for three days and was very weak in health and could not stand in the morning parade and fell down. He was thereafter taken for

treatment and subsequently discharged from service on account of the above mentioned disease. The petitioner would claim that he or any of his family members never had any such complaint and he was fit at the time of enrolment also. The petitioner would argue that the opinion of the Medical Board is erroneous and that the discharge was illegal.

4. The respondents through the reply-affidavit and pleadings of the learned Senior Panel Counsel Mr. B.Shanthakumar would state that the petitioner lost consciousness on 9th July 1992 whereafter he was treated and placed in medical category CEE for six months. On review, he was placed in medical category CEE permanent on 1st August 1994. The petitioner expressed his unwillingness to continue his service through a certificate dated 30th May 1997. Since he was in Low Medical Category at the time of discharge, he was brought before Release Medical Board on 5th September 1997 which recorded his disability as neither attributable to nor aggravated by military service with 20% disablement for two years. His claim for pension was correctly disallowed by PCDA (P) Allahabad since the ID is not connected with military service. In view of the facts and circumstances, the application is devoid of merit and is liable to be dismissed.

5. Heard both sides and perused the documents.

6. The points for determination are,

1) Whether or not the petitioner is entitled

to disability pension?

2) Is there any other relief that the petitioner is entitled to?

7. A perusal of the Invaliding Medical Board indicates that the petitioner's ID was not attributable to nor aggravated by service and consequently PCDA did not grant him service pension. It is the established position of law that the opinion of a Medical Board being that of the expert body should not be interfered with by a Court or a Tribunal. There are several judgments supporting this decision notably **A.V. Damodaran vs. UOI in (2009) 8 MLJ 1475 SC; Om Prakash Singh vs. UOI in AIR 2010 SC 3557; O.A.No.9 of 2012 and O.A.No.40 of 2012** in the Armed Forces Tribunal, Regional Bench Chennai. A common thread in all the above judgements is that the opinion of the Medical Board is to be given credence and primacy. Accordingly, we are not inclined to interfere with the opinion of the Medical Board and hence, we are of the view that the petitioner is not entitled to disability pension.

8. Admittedly, the petitioner was invalided out of service. Under the provisions of Rule 197-A of Pension Regulations of the Army, the petitioner is entitled to invalid pension, since his ID was not attributable nor aggravated by military service. Further since he has more than 10 years of service, he is entitled to invalid pension in terms of Rule 198 of Pension Regulations of the Army. Rule 200 of the Pension Regulations of the Army lays down that the invalid pension which in the case of Other Ranks is equal to that of

the service element of disability pension, that would have been admissible in cases where the causes were attributable to or aggravated by service. Thus, we find that the petitioner is entitled to invalid pension in terms of the relevant Rules of Pension Regulations as narrated above.

9. In fine, the application for grant of his disability pension is dismissed. The respondents are directed to grant invalid pension to the petitioner. As held in the **Tarsem Singh's** case, the arrears will be calculated with effect from 19th November, 2008, i.e., three years prior to the date of filing his petition. No costs.

10. Learned counsel for the petitioner submits that he is the legal aid counsel as per the Order in Ref.B/82/2012, dated 6.3.2012 and therefore, the Secretary, High Court Legal Services Committee, Chennai-600104, is directed to pay a sum of Rs.5,000/- (Rupees five thousand only) towards counsel fee to the learned counsel Mr.D. Bhakathavatsalu.

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

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

03.07.2013
(True copy)

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

Internet : Yes / No
Internet : Yes / No

vs

To:

1. Secretary, Ministry of Defence
New Delhi.
2. The President
Medical Board
No.167, Military Hospital
C/o 56 APO.
3. The Commanding Officer
Topkhana Abilesh
Nasik Road Camp
Pin 422 102
APS PIN 908802.
4. M/s. D. Bakthavatsalu
and P.Manikannan
Counsel for petitioner.
5. The Secretary,
High Court Legal Services Committee,
High Court Compound,
Chennai-600104.
6. Mr. B.Shanthakumar,
Counsel for Respondents
7. OIC, Legal Cell, ATNK & K Area HQ, Chennai.
8. Library, AFT/RBC, Chennai

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

AND

**HONOURABLE LT GEN (RETD)
ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)**

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