

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.38 of 2013

Monday, the 29th day of July 2013

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

AND

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

Ex Sigman (No 14284228)
A. Ramasamy, aged 62 years
103, Harveypatti
Thiruparangundram
Madurai-625005, Tamil Nadu.

.. Applicant

By Legal Practitioner:
Mr. S.P. Ilangovan

vs.

1. Union of India, Ministry of Defence
represented by the Defence Secretary
Ministry of Defence, South Block
DHQ Post, New Delhi-110 011.

2. The Chief of the Army Staff
Army Head Quarters
Sena Bhavan,DHQ Post
New Delhi-110011.

3. O I/C, Signals Records
Jabalpur, PIN 908770
C/O 56 APO.

4. The PCDA (Pension)
Draupathighat, Allahabad
U.P. 211014.

..Respondents

By Mr.B. Shanthakumar, SPC

ORDER

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

1. This application has been filed by the petitioner seeking relief to quash the impugned order of third respondent No.P/14284228/RAMB/NER, dated 28.12.2011 and grant eligible disability pension and benefits to the petitioner and grant such other relief as deemed fit.

2. The facts of the case are that the petitioner enrolled in the Army on 6th January 1971. In April 1977, when he was posted at Chandigarh, he was taken ill and was taken to MH, Chandigarh where his disease was diagnosed as "Idiopathic Epilepsy". He was invalided out of service under Army Rule (3) (III) (iii) on 1st July 1977. The Invaliding Medical Board held his ID to be not attributable to nor aggravated by service and his claim for disability pension was rejected by PCDA which was communicated to the petitioner vide Signals Records Letter No.P/14284228/DP4/ dated 20th February, 1978 with an advice to appeal against the decision, if so desired, within six months from 20th January 1978. The petitioner was paid Invalid Gratuity of Rs.1,634.85 and Death-cum-retirement Gratuity of Rs.891.75. The petitioner submitted an application dated 7th August 1980 to Signals Records requesting for disability pension. Thereafter, he sent representation to the Signals Records vide his application dated 11th November 2011 which was

replied by Signals Records vide letter dated 28th December 2011 which has been challenged by the petitioner.

3. The petitioner through his application and pleadings of his learned counsel Mr. S.P. Ilangovan would plead that he was enrolled on 6th January 1971 as an able-bodied young man and was found fit for the service. In April 1977 when he was posted to 416 Signals Regiment, he was required to attend a morning parade at 0900 Hrs after 12 Hrs of continuous duty from the previous night. During the parade he collapsed and fell down due to exhaustion and was injured in the head and was taken to Military Hospital, Chandigarh, where he was diagnosed to be suffering from "Idiopathic Epilepsy". The Medical Officers were unable to cure him and the Army chose to invalidate him out of Army service with 30% disability for life. The petitioner would state that ever since, the applicant has been running from pillar to post and knocking every door of defence officers to get his eligible disability pension. Due to his poor health and recurring fits, he could not secure any civil employment, as a result of which, he was languishing in utter poverty and could not be treated in Military Hospital since he was a non-pensioner. Due to these factors, he was unable to pursue the matter any further. After learning about High Court's decision for grant of disability pension to persons affected with 'Epilepsy', he sent an appeal dated 11th November 2011 which was rejected by the petitioner in a routine manner. The impugned order dated 28th December 2011 is unjust, arbitrary and

without any legal bias and is against the Principles of Natural Justice. He would submit that he was fit during the initial period of 6 years of his service and had been suffering from the said disease, "Idiopathic Epilepsy" he could not have passed the physical test. He would claim that there was no history of "Idiopathic Epilepsy" in any member of his family. Since he was inflicted by this disease during the service, it should be held to be attributable to and aggravated by Army service in accordance with Sections-4, 5A, 8 and 9 of Entitlement Rules for Pensionary Awards 1982. He would further submit that Item 33 of Amendment to Chapter VI and VII of Guide to Medical Officers, 2008 lays down that the disorder is attributable to/aggravated by military service. He would cite cases to support his claim such as S.C. Civil No.4949 of 2012 (Dharamveer Singh vs. UOI), O.A.No.61 of 2011, AFT Chennai, T.A.No.20 of 2010, AFT Jaipur, W.P.No.26258 of 2010 in Madras High Court and CWP No.10808 of 1989 in Punjab and Haryana High Court.

4. The respondents would submit that the petitioner was invalidated and boarded out from service under Army Rule 13(3) (III) (iii) for the disease "Idiopathic Epilepsy" when he had 6 years and 50 days of service excluding 26 days as non-qualifying service. The said ID was opined by the Invaliding Medical Board to be neither attributable nor aggravated by service and the disablement was regarded at 20% for two years. PCDA rejected his disability pension claim. The petitioner, vide Signals Records letter dated 20th February 1978 was advised to prefer an appeal to Signals Records

within a period of six months, if he so desired. The petitioner did not do so. The petitioner was paid the Invalid Gratuity and DCR Gratuity. The respondents would claim that this application is not sustainable on the ground of delays and laches. After being invalided out of service in 1977, the petitioner did not appeal against the rejection of his disability pension as advised by Signals Records, but filed this petition only in November 2011. The respondents would cite the judgment of AFT Principal Bench in O.A.No.55 of 2012 in the case of **ERA Rakesh Kumar Aggarwal vs. UOI**, a judgment of AFT Regional Bench, Lucknow in O.A.No.Nil (1) of 2011 in the case of **Ram Bahadur Prasad vs. UOI and others** and a judgment of AFT Regional Bench, Lucknow in O.A.No.Nil (10) of 2012 in the case of **Manendra Prasad vs. UOI and others**. The respondents would further submit that the petitioner has not exhausted all his remedies as required by the Armed Forces Tribunal Act in that he has not preferred any appeal against the rejection of the disability pension as advised by the Signals Records. Therefore, the petition is liable to be set aside until the remedies are exhausted. On the issue of the petitioner being fit at the time of enrolment, the respondents would state that the medical test at the time of enrolment is not exhaustive and its scope is limited to broad physical examination and some dormant diseases may not be detected. His hereditary and congenital diseases may manifest later in life irrespective of certain conditions. The Invaliding Medical Board physically examined the

petitioner and took into consideration his service condition and this fact was communicated to the petitioner at the time of assessment. Accordingly, the Medical Board gave its opinion. The respondents would submit that there are several judgments of the Supreme Court and the Benches of the Armed Forces Tribunal in which opinion of the Medical Board which is an expert body is to be given due weightage, value and credence. The respondents would further submit that the Signals Records letter No.P/14284228/DP-4/NER, dated 28th December 2011 is not an impugned order as averred by the petitioner. It is only an intimation that his disability pension was rejected by PCDA, Allahabad, vide letter No.G-3/77/6261/V, dated 20th January 1978. In view of the facts and circumstances, the respondents would pray that this petition be dismissed being devoid of merits.

5. Heard both sides and perused documents.

6. Before examining the merits of the case, the issue of delays and laches needs to be put in perspective. Admittedly, the petitioner did not take any action after his letter sent in 1980, of which there is no record with the respondents, till November 2011 and this delay of over 31 years has not been explained properly by the petitioner except to say that due to poverty and lack of means, he was unable to pursue the matter any further. We are not convinced that the reason is sufficient to justify the delay. In this we are guided by the order of the Principal Bench in OA 55 of 2012 in which it has been held:

" In the present case, petitioner was discharged way back in 1981 and he approached the Hon'ble High Court somewhere in 2000 and Hon'ble Delhi passed the order in 2002. In compliance of order of Hon'ble Delhi High Court dated 15.11.2002, respondents passed an order dated 23.04.2004. Now almost after eight years, the order passed by the respondents on 23.04.2004 has been challenged vide present petition. This kind of inordinate delay cannot be entertained. More so there is no justification for condonation of delay in this case. Hence, we hold that objection taken by the respondents is correct and petition suffers from inordinate delay and laches. Petition is accordingly dismissed. No order as to costs. "

In O.A.No.Nil (1) of 2011, dated 8th August 2012, AFT Lucknow Bench held as follows:

"6. On facts it is stated in the delay condonation application that the applicant could not agitate the matter against the discharge due to financial constraint and personal family problems. No particulars have been given. Nor have these general allegations been substantiated. In our opinion, the mere bald averment that the applicant was under financial constraint and having personal family problem is not sufficient explanation for the delay of about nine years. The delay condonation application is therefore dismissed and consequently the Original Application is also dismissed.

7. No order however as to costs."

In O.A.No.Nil(10) of 2010, dated 8th August 2012 Lucknow Bench of Armed Forces Tribunal held as follows:

"25. The case of the applicant in the delay condonation application is that his mother was seriously ill and he could not approach the Court/Tribunal. The applicant was discharged in the year 2002. His

mother is said to have been died on 08.11.2008. There is nothing to show that she was suffering from such a serious disease for all these years as could have precluded the applicant from approaching the Court. The applicant has not annexed any papers to substantiate the case of illness. In any case the delay of such a long period cannot be condoned on a bald averment that the mother of the applicant was ill and died.

26. We therefore do not find any good reason to condone the inordinate delay. The delay condonation application and consequently the Original Application too is dismissed. "

Therefore, we are of the view that the petition is liable to be set aside on the grounds of delays and laches.

7. Now, we examine if the petitioner has exhausted all his remedies.

Section 21 of the Armed Forces Tribunal Act reads:

21. Application not to be admitted unless other remedies exhausted:

" (1) The Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), as the case may be, and respective rules and regulations made thereunder.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950), and respective rules of regulations—

(a) if a final order has been made by the Central Government or other authority or officer or other person competent to pass such order under

the said Acts, rules and regulations, rejecting any petition preferred or representation made by such person;

(b) where no final order has been made by the Central Government or other authority or officer or other person competent to pass such order with regard to the petition preferred or representation made by such person, if a period of six months from the date on which such petition was preferred or representation was made has expired. "

The petitioner is entitled to two appeals against the rejection of his disability pension claim. It is on record that he has not filed any appeal against the rejection. The order that the petitioner has challenged is not a response to an appeal but only reiteration of information given to him earlier by the respondents' letter dated 20th February 1978. The petitioner therefore is advised to exhaust his remedies and then agitate before this tribunal if relief is not granted to him by the competent authorities.

8. In fine, this application is dismissed on account of delays and laches. The petitioner may appeal against rejection of disability pension before competent authorities, if he is eligible to do so and if so advised. No costs.

9. The advocate's fee for the Legal Aid Counsel appearing for the applicant is fixed at Rs.5,000/- (Rupees five thousand only) and is directed to be paid by the High Court Legal Services Committee, Chennai-600104.

Sd/

LT GEN (Retd) ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)

Sd/

JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)

29.07.2013
(True copy)

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

Internet : Yes / No
Internet : Yes / No

To:

1. The Defence Secretary
Ministry of Defence, South Block
DHQ Post, New Delhi-110 011.
2. The Chief of the Army Staff
Army Head Quarters
Sena Bhavan
DHQ Post
New Delhi-110011.
3. O I/C, Signals Records
Jabalpur
PIN 908770
C/O 56 APO.
4. The PCDA (Pension)
Draupathighat, Allahabad
U.P. 211014.
5. The Secretary
High Court Legal Services Committee
Satta Udhavi Maiyam Buildings
North Fort Road
High Court Campus
Chennai-600104.
6. Mr. S.P. Ilangovan,
Counsel for Applicant
7. Mr. B. Shanthakumar,
Counsel for Respondents
8. OIC, Legal Cell, ATNK & K Area
Chennai.
9. Librarian, AFT, Regional Bench Chennai.

HON'BLE JUSTICE V. PERIYA KARUPPIAH
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HON'BLE LT GEN (RETD) ANAND MOHAN VERMA
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Dt: 29.07.2013