

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.86 of 2012

Monday, the 08th day of July, 2013

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

AND

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

Rank – Ex - Swr, Name - Ponniah Annadurai
Service No. 1045346,
Son of - Late Ponniah, aged about 62 years,
No 2-6-37, 3rd Street, Sangeeth Nagar,
Post-Pothumbu, Koodal Nagar, District-Madurai,
Tamil Nadu, Pin - 625 018.

... Applicant

By Legal Practitioners:
M/s. M.K. Sikdar & S. Biju

Vs.

1. Union of India,
Through – Ministry of Defence (Pen –A),
Army HQ, DHQ P.O.,
New Delhi-110 011.
2. The Officer – in- Charge,
Armoured Corps Record Office,
Post Bag-55, Ahmednagar, Pin-414 002.
3. The President Medical Board,
Military Hospital, Defence Colony Road,
Chennai-600 032.
4. The PCDA (P),
G-3/RA Section, Draupadhi Ghat,
Allahabad (U.P.), Pin – 211 014.

... Respondents

By Mr.B.Shanthakumar, SPC

ORDER

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

1. This application has been filed by the applicant to set aside the impugned Orders No.1045346 / RA / 138m/ Pen, dated 20.1.2001 and Order No.1045346 /RA /X / Pen, dated 31.1.2007, rejecting the disability element of pension of the applicant passed by the 2nd respondent and to set aside the finding of the Re-Survey Medical Board held by the 3rd respondent on 28.12.2006 as arbitrary and direct the respondents to regularise the disability pension rounded off to 50% for life for the applicant, with interest and costs.

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

The applicant was enrolled in Indian Army on 24.1.1970 as Swr and he underwent strenuous basic training and thereafter, he was found fit in every mandatory medical examinations. The applicant did not suffer any ailment at the time of joining the Indian Army. During the military service and due to the stress and strain of training under adverse working condition, the applicant fell sick and reported to Military Hospital, where he was diagnosed

as affected by 'Pulmonary Tuberculosis'. The applicant was thereafter, invalided out of service on 13.7.1972 after completing 02 years 05 months and 18 days of service, under Rule 13 (3) III (iii) of Army Rule, 1954. The Invaliding Medical Board assessed his disability at 40% and opined that the disability was attributable to military service and the applicant was granted disability pension from July, 1972. The applicant was thus receiving disability pension, which consists of both disability and service element, from the respondents. The applicant was periodically brought before many Re-Survey Medical Boards and as a result of Re-Survey Medical Board held on 21.8.1990 by the 3rd respondent, the said disability was re-assessed at 40% for five years and the applicant was continuing to draw the disability pension on that basis. The applicant was again brought before Re-Survey Medical Board held on 30.11.1995 and the disability was re-assessed at 15% to 19% for further five years ending with 20.8.2000, which was also intimated by the 2nd respondent to the applicant. The 2nd respondent further intimated that the disability pension of the applicant is discontinued and the applicant may prefer an appeal before the 1st respondent if he chooses to do so. An appeal was filed before the 1st respondent by the applicant to revise the discontinuance of disability pension and the same was pending for a long time. The applicant was again brought before the Re-Survey Medical Board on 23.9.2000 by the 3rd respondent and the disability was again re-assessed at 15% to 19% for life and the same was informed by the 2nd respondent

through their letter dated 6.11.2000. However, the said disability at 15% to 19% was arbitrarily reduced to Nil% for life by the 4th respondent for rejecting the claim of the applicant. The said rejection was communicated through a letter dated 20.1.2001 by the 2nd respondent. An appeal was preferred by the applicant before the 1st respondent and during the pendency of the appeal, the Banker had stopped payment of disability pension comprising both service element and disability element from January, 2002. The representation of the applicant before the 2nd respondent through his letter dated 5.4.2002 and 25.5.2002 for redressing his grievance was rejected by the 2nd respondent in its letter dated 12.6.2002. The subsequent representations made by the applicant before the respondents were not heard. However, the 1st respondent directed a Reassessment Medical Board for the assessment of the disability of the applicant and a Re-Survey Medical Board was constituted by the 3rd respondent on 18.12.2006 and examination of the applicant was held on 28.12.2006 and the applicant was discharged from the hospital on 29.12.2006. However, the opinion of the Re-Survey Medical Board was not intimated to the applicant. The 2nd respondent passed an Order on 31.1.2007 rejecting the disability element of pension of the applicant by stating that the applicant's disability was assessed at Nil% which is less than 20% in the Re-Survey Medical Board held during December, 2006 at Military Hospital, Chennai. The said discontinuance of the disability pension

containing both disability element and service element is contrary to the rules and is biased, arbitrary, unlawful and with mala fide intentions. Therefore, the request of the applicant for the grant of disability pension after being rounded off to 50% may be ordered to have been paid from the day of discontinuance and the application may thus be allowed.

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

The applicant was enrolled in the Army on 23.2.1970, and was locally discharged from service on 1.7.1972 under the provisions of Rule-13 (3) item III (iii) of Army Rule, 1954, after having invalided out of service by an Invaliding Medical Board. After the Invaliding Medical Board's report, all the documents were forwarded to PCDA (P), Allahabad, for the grant of disability pension and the PPO has been passed for the disability pension at 100% payable from 1.7.1972 to 23.6.1973. However, the applicant was subjected to examinations on various Re-Survey Medical Boards in order to assess the degree of his disability and they are listed in the Table as follows :-

<u>Ser No</u>	<u>Date & Place of Re-Survey Board</u>	<u>% of disability assessed</u>	<u>Assessment period</u>	<u>% Considered by PCDA(P)</u>	<u>Disability pension granted vide PPO and date</u>
(a)	MH Madras	90% of two years	<u>24 June 73</u> <u>14 June 75</u>	90%	Rs 58/-pm vide PPO No

	15 June 1973				D/RA/10392/73 dt 04 Sep 73
(b)	MH Madras 30 May 1975	100% for one year	<u>15 Jun 75</u> <u>29 May 76</u>	100%	Rs 61/-
(c)	MH Madras 26 June 1976	90% for two years	<u>26 June 76</u> <u>25 June 78</u>	90%	Rs 58/-pm vide PPO No D/RA/1552/76 dt 08 Oct 76.
(d)	MH Madras 08 Aug 1978	90% for two years	<u>26 June 78</u> <u>07 Aug 78</u> <u>08 Aug 78</u>	90%	Rs 58/-pm vide PPO No D/RA/6339/79 dt 18 May 79.
(e)	MH Madras 28 Aug 1980	90% for two years	<u>08 Aug 80</u> <u>27 Aug 90</u>	90%	Rs 58/- pm vide PPO NO D/RA/17261/80 dt Dec 80.
(f)	MH Madras 21 Aug 1990	50% for permanent	<u>28 Aug 90</u> <u>20 Aug 95</u>	40% for 5 years	Rs 180/-pm vide PPO No D/RA/10778/1990 dt 13 Jan 91.
(g)	MH Madras 30 Nov 1995	Less than 20% (11-14%) for five years	<u>20 Nov 95</u> <u>29 Nov 00</u> & Intervening period wef 21 Aug 95 to 29 Nov 95	11-14% for 5 years	-
(h)	MH Madras 23 Sep 2000	Nil%	No further review reqd	-	-

4. As seen from the Tabular column, the degree of disability was assessed by the Re-Survey Medical Board held on 23.9.2000 at MH Chennai, was Nil%. Since the disability was found Nil%, a decision to withhold the disability pension was taken by the respondents. An appeal petition was

given against the said Order to the Government of India, Ministry of Defence, on 1.10.2000. In the said appeal, the applicant was directed to be brought before Reassessment Medical Board under the provisions of para 7 of Government of India, Ministry of Defence letter No.1(2)/97/D(Pen)/C dated 7.2.2001. The said Re-Survey Medical Board was held at MH Chennai on December, 2006 and the degree of disability of the applicant was assessed at Nil percentage for life as the disability was found CURED and the RSMB was approved by DADH HW ATNK Area on 8.6.2007. Since the assessed disability was less than 20%, no action was necessary on the part of the PCDA (P), Allahabad, and such a claim should not be sent to them. Since the disability was assessed at Nil percent, the applicant was found not eligible for the grant of disability pension. Further, the applicant being a retiree prior to 1.1.1973, the service element is contingent upon the continuance of disability element unless and until the pensioner has put in a minimum of 10 years of service before 1.3.1968 and 05 years of service after the said date upto 31.12.1972. The service element becomes permanent feature only with said qualification. However, as per para-186 of Pension Regulations for the Army, 1961, the pensioners who were invalided out of service on and after 1.1.1973, were eligible for continuance of service element pension till the life. Subsequently, as per IHQ of MoD (Army) letter No.B/46453/Misc/A4/PS-4 (L) dated 29.2.2012, there is no minimum qualifying service required for the grant of service element, for pre 1973

discharged person. Therefore, the applicant is eligible for the grant of service element with effect from 1.1.1973 and not eligible for the grant of disability element as prayed for by him. Therefore, the application filed by the applicant may be dismissed as devoid of merits and the same is liable to be dismissed.

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

- 1) Whether the applicant is entitled for disability pension from the date of its discontinuance as directed in the impugned Orders ?
- 2) Whether the impugned Orders are liable to be set aside ?
- 3) To what relief the applicant is entitled for ?

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

7. **Points No.1 & 2:** The applicant was enrolled in the Indian Army on 24.1.1970 and he completed his training at Ahmed Nagar. But due to strenuous training and adverse working conditions, the applicant fell sick and the disease was diagnosed as 'Pulmonary Tuberculosis'. Therefore, the

applicant was produced before Invaliding Medical Board and was invalidated out of service on 13.7.1972 after the completion of 02 years 05 months and 18 days service under Rule-13(3) (III) (iii) of Army Rules, 1954. The Medical Board had opined that the disability was attributable to military service and the disability was assessed at 100% and the applicant was granted disability pension. The pension granted to the applicant contains disability element and service element pension. Periodically the applicant was re-assessed with various amount of disabilities and was continued to be paid with the disability pension as mentioned in the Table in the Reply Statement. Apart from these admitted facts, the contention of the applicant was that the subsequent Re-Survey Medical Board held on 23.9.2000 also found the disability of the applicant at 15 to 19%, but the CCDA (P), Allahabad, had reduced it to Nil% without any justification and stopped the disability pension through its letter dated 20.1.2001. According to the applicant, the CCDA (P), Allahabad, had no authority to fix at Nil% against the quantum fixed by the Medical Board at 15 to 19% on 23.9.2000. The Learned Counsel for the applicant was stressing on this point and was seeking for broad banding of 15 to 19% into 50% as per the Policy letter of the Government of India dated 31.1.2001. The said contention of the applicant was found to be not correct on a careful perusal of the Medical Board proceedings dated 23.9.2000 produced in Annexure R-I. The percentage of 15 to 19% referred in Column 16 was the previous

assessment of disability. Whereas the assessment of disablement reached by the Medical Board proceedings as on 23.9.2000 was 'Nil' at Column-9. Therefore, the reference as to Nil percentage by the CCDA (P) in its letter dated 20.1.2001, is perfectly alright and the applicant's submissions is found to be incorrect.

8. No doubt, the applicant ought to have been assessed with the disability of 50% broad banded from 15 to 19% as found in the previous RSMB, till the Re-Survey Medical Board held on 23.9.2000 as per the Policy letter of the Government of India dated 31.1.2001, but it was not pursued by the applicant within a period as allowed by law of limitation. Be what it may, the assessment of disability in the Re-Survey Medical Board proceedings dated 23.9.2000 was found to be Nil%. A subsequent Re-Survey Medical Board constituted for assessing the percentage of disability was held during December, 2006, and the Re-Survey Medical Board proceedings are produced as Annexure R-II. The original of the Re-Survey Medical Board proceeding is also produced for our perusal. On a careful perusal of the Re-Survey Medical Board proceedings, held on December, 2006, the opinion of the Medical Board at Page-3 para-9, the disability of 'Pulmonary Tuberculosis' was found to have been cured and the net assessment of disability and duration are shown as 'Nil For Life'. In the first page of the said Medical Board proceedings, the previous disability found by the Re-

Survey Medical Board have been extracted in Column-16. In the said opinion, the disability was assessed at Nil% for life. Therefore, we could understand that the disability of Pulmonary Tuberculosis sustained by the applicant was fully cured and he was having no disability during the last two Re-Survey Medical Board proceedings.

9. It is a settled law that the opinion of Medical Boards containing panel of expert Doctors should be given primacy and credence. In a Judgement of Hon'ble Apex Court reported in **(2009) 9 SCC 140**, between **Secretary, Ministry of Defence and others Vs. A.V. Damodaran (Dead) through LRs and others**, in paras-8 and 9, the following principles have been laid down :-

"8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invalidating medical board. The said release/invalidating medical board

generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same, they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in view of the disease being capable of being improved. All the aforesaid aspects are recorded and recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/recommendations on the basis of the medical report, injury report, court of enquiry proceedings, if any,

charter of duties relating to peace or field area and of course, the physical examination of the individual.

9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service.”

10. This position has been followed by this Tribunal in the judgment dated 3.12.2012 made in O.A.No.9 of 2012 and also in O.A.No.40 of 2012 passed on 25th February 2013. In O.A.No.84 of 2012, this tribunal has held that the opinion of the Medical Board given by a body of experts and its opinion should not be altered or changed by a Court or a Tribunal. In further support of our above mentioned position, we refer to the following Supreme Court judgments in all of which it has been held that the opinion of a Medical Board must be given primacy, due weight, value and credence: ***Civil Appeal No 9 Kumar 1837 of 2009, UoI vs Ravinder kumar; Om Prakash***

Singh vs UoI (2010) 12 SCC 667; UoI vs Ram Prakash (2010) 11 SCC 220.

11. In the aforesaid Judgements, we can see that the Medical Board's proceedings need not be interfered with on any serious flaw. As far as this case is concerned, the Medical Board's opinion was not seriously affected by any flaw in the said Medical Board proceedings. Therefore, the opinion of the Medical Board held on 23.9.2000 and during December, 2006, assessing the disability of the applicant at Nil% are accepted. When the disability has become Nil%, what would be the impact or the consequence towards the payment of disability pension is dealt with in Regulation-186 of Pension Regulations for the Army, 1961 (Part-I). It runs as follows :-

"186. (1) An individual who is invalided out of service with a disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.

(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. He shall, however, continue to draw the service element of disability pension."

12. However, it was argued by the Learned Senior Panel Counsel that the applicant being a pre-retiree of 1.1.1973, he could not seek for the payment of service element of pension as per the Regulation 186 of Pension Regulations for the Army, 1961, and, therefore, both disability element and service element of pension were stopped on the applicant reaching Nil percentage of disability. Even though the restriction imposed by the previous policy on the payment of service element of pension under Regulation-186 of Pension Regulations for the Army, 1961 (Part-I), for the retirees of 1.1.1973, it was admitted towards their entitlement in the Reply Statement filed by the respondents as follows :-

"However, as per IHQ of MoD (Army) letter No.B/46453/Misc/A4/PS-4 (L) dated 29 Feb 2012, there is no minimum qualifying service required for grant of service element for pre 73 discharged person. Therefore, the applicant is eligible for grant of service element with effect from 01 Jan 73 and not eligible for grant of disability element as prayed by him."

13. In the above said submission, the respondents have categorically admitted that the applicant was only entitled to service element of pension as per para-186 of Pension Regulation for the Army, 1961 (Part-I) and not the disability element since his disability was assessed at 'Nil' percentage. In the said circumstances, we we could see that the provisions of para-186

of Pension Regulations for the Army, 1961 (Part-I) is squarely applicable to the applicant. It is submitted that the applicant was not paid with the entire disability pension on the finding of Re-Survey Medical Board held on 23.9.2000 and his disability pension was stopped on and from January, 2002, as per the letter of Indian Overseas Bank dated 25.4.2002, produced in Annexure A-8. The applicant is no doubt entitled to service element of pension even though his disability was found Nil%, which is found quantified below 20% as per the provisions of Regulation-186 of Pension Regulations for the Army, 1961 (Part-I) from the said date. When we assess what would be the service element pension payable as on January, 2002, we have to consider the earlier quantum of disability at 15 to 19% when the service element was continued to be paid. The said disability element was lastly assessed in the Re-Survey Medical Board held on 30.11.1995 produced as Annexure R-IX. In the said Medical Board proceedings, it was assessed less than 20% i.e. 11 to 14%. But it was referred to as 15- 19% in the letter addressed by CCDA (P), Allahabad, dated 4.3.1996 to the applicant, produced as Annexure R-X. Whatever the percentage may be, it is below 20% and it was prevailing during the period 21.8.1995 to 29.11.2000.

14. On the introduction of the broad banding through the policy letter of Government of India, Ministry of Defence dated 31.1.2001, the disability element which were less than 20% should be rounded off to 50%. The said

benefits conferred upon the retirees on and after 1.1.1996 were also made applicable to pre 1.1.1996 retirees. The Judgement of Hon'ble Apex Court reported in 2009 (9) SCC between **K.J.S. Buttar Vs. Union of India and another**, was also very much on the point as laid down in para-14. It runs as follows :-

"14. In our opinion the appellant was entitled to the benefit of para 7.2 of the instructions dated 31.1.2001 according to which where the disability is assessed between 50% and 75% then the same should be treated as 75% and it makes no difference whether he was invalided from service before or after 1.1.1996. Hence the appellant was entitled to the said benefits with arrears from 1.1.1996, and interest at 8% per annum on the same."

15. Therefore, it is quite clear that the percentage assessed by the Re-Survey Medical Board held on 30.11.1995, which was the previous Re-Survey Medical Board of the Re-Survey Medical Board held on 23.9.2000, found the disability element below 20% should have been rounded off to 50% and the proportionate service element should also be paid in accordance with broad banded disability of 50%. Therefore, the quantum of service element ought to have been paid to the applicant as in January, 2002, should be on disability element of 50%. Such a service element of

pension should have been continued by the respondents till the finding of the Re-Survey Medical Board held on 23.9.2000, in which the disability element is found at Nil percentage. The said stoppage of service element of pension in January, 2002 is against rules and the policy of the Government. Therefore, we consider it as illegal. Therefore, we are of the considered view that the respondents should pay the service element of pension at 50% of disability element in proportionate to 50% of the disability element from January, 2002, to till this date as per Regulation-186 of Pension Regulations for the Army, 1961 (Part-I). Accordingly, both the points are ordered.

16. **Point No.3:** In view of our discussion held above, we are not inclined to quash the Re-Survey Medical Board held on 28.12.2006 and direct to pay 50% of the disability pension payable to the applicant. However, the applicant is found entitled to the payment of service element of pension on and from January, 2002, to till this date and be continued to be paid in proportionate to the disability element of 50% broad banded from 15 to 19% since 1.1.1996 onwards to the applicant. The application is allowed to that extent.

17. In fine, the application is allowed to the extent as indicated above. The respondents are directed to calculate the arrears of service element of pension as indicated from January, 2002, to till this date and to pay to the

applicant within a period of three months from today and to continue to pay the future service element of pension as indicated above. In default to pay the said arrears as directed above, the applicant shall be entitled to 9% p.a. interest over the arrears, till the date of such payment. However, there is no order as to costs.

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

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

08.07.2013
(True Copy)

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

Internet : Yes / No
Internet : Yes / No

NCS

To,

1. The Secretary to Government,
Union of India,
Ministry of Defence (Pen -A),
Army HQ, DHQ P.O.,
New Delhi-110 011.
2. The Officer – in- Charge,
Armoured Corps Record Office,
Post Bag-55, Ahmednagar, Pin-414 002.
3. The President Medical Board,
Military Hospital, Defence Colony Road,
Chennai-600 032.
4. The PCDA (P),
G-3/RA Section, Draupadhi Ghat,
Allahabad (U.P.), Pin – 211 014.
5. M/s. M.K. Sikdar & S. Biju,
Counsel for applicant.
6. Mr. B. Shanthakumar, SPC
Counsel for respondents.
7. OIC, Legal Cell (Army),
ATNK & K Area,
Chennai-9.
8. 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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