

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.90 of 2012

Tuesday, the 23rd day of July, 2013

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

AND

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

N. Veerachami,
S/o Nallappa Naicker,
308, A. Srinivasa Nagar,
Lakshmipuram Post,
Kovilpatti 628 502.

... Applicant

By Legal Practitioner:
Mr. N. Balamuralikrishnan
for M/s. S. Mahesh

Vs.

1. The Secretary to Government of India,
Ministry of Defence,
New Delhi.
2. The Deputy Commandant,
Bengal Engineer Group and Centre,
Roorkee 247 667.
3. The Senior Records Officer (OIC),
BEG Records Office, Roorkee.
4. The Chief Controller of Defence Accounts,
Allahabad, Uttar Pradesh.

... Respondents

By Mr.B.Shanthakumar, SPC

ORDER

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

1. This application has been filed by the applicant for the relief that the proceedings in Pen/D-5012/3/R dated 6.3.1981, passed by the 3rd respondent; the consequential proceedings of the 1st respondent in No.7(1618)81/D(Pension) dated 23.7.1983; the Order of 3rd respondent in Pen/Appeal-279/D/R dated 24.2.1986, and the proceedings of the 1st respondent in No.6(134)/84/D(Pen.App.Cttee.) dated 19.4.1985, be set aside and consequently to direct the respondents to grant the applicant disability pension for the period of service rendered by him in the army and to consider his case for membership under Ex-Serviceman Contributory Health Scheme, and for other reliefs.

2. The factual matrix of the case as told in the amended application would be as follows :-

The applicant joined service in the Indian army on 16.11.1974 and after the completion of his Trade Training for two years, he was posted to EME Workshop of 50 AD Regiment and served from 1976 to 1978.

Thereafter, his service was transferred to BEG in the year 1978. However, he was once again asked to undergo Basic Training under the premise that the above training at EME was not upto the mark. The said direction to undergo Basic Training once again is arduous in nature and it was unheard of. The applicant underwent the training for the second time in obedience to the directions. Due to the arduous training, the health condition of the applicant got deteriorated, which resulted in severe head ache. He was referred to Command Hospital, Chandigarh. During the treatment, he was diagnosed as suffering from Hysteria. On the basis of the diagnosis, he was referred to Invaliding Medical Board on 4.11.1980 and he was thus invalided out of service on 3.2.1981. At the time of joining the service, the applicant was examined medically where his health condition was reported to be perfect. During his tenure of service for 06 years 80 days, he never complained of any illness. Therefore, the said disability of the applicant should be considered as attributable to or aggravated by military service. The Medical Board recommended 'EEE' medical category and the degree of disablement was assessed as 'permanent'. Despite all these assessment, he was sent out of service even without an invalid pension since the applicant was poor in education and lack of knowledge. The applicant came to know about the Scheme called 'Ex-Serviceman Contributory Health Scheme' (ECHS), only recently and he approached the DSSA (Soldier) Board, who informed him that since the applicant was not in possession of Pension

Payment Order, he is not eligible to join the above Scheme. The applicant submitted a representation on 25.9.2010 for getting disability pension for the service rendered by him in the army and for a membership in ECHS. Since there was no response, he preferred another representation on 12.1.2011 to the 1st respondent and a reply dated 17.12.2011 was received by the applicant in which his request was rejected by the 1st respondent. In the said reply, the proceedings dated 6.3.1981, 23.7.1983 and 24.2.1986 were annexed and the applicant came to know about those proceedings only on receipt of the said reply. From the said documents, the applicant understood that the disability pension was denied on the opinion of the Medical Board that the said disability was neither attributable to nor aggravated by military service. The said opinion of the Medical Board is not in accordance with the norms instructed to them to assess the disability. The said disability of the applicant had developed only after joining the BEG and, therefore, the opinion of the Medical Board is not correct. Therefore, he would request the Tribunal to grant appropriate disability pension on the quantum of disability of the applicant with arrears and costs after setting aside the impugned Orders.

3. The contentions of the respondents as stated in the Reply Statement would be as follows :-

The applicant was enrolled in the army on 16.11.1974 as Sepoy Cook (U) in 3 EME Centre and was transferred to Bengal Engineering Group and Centre as Sapper Cook (Unit) on 2.3.1977. The applicant was invalided out of service on 3.2.1981 A.N. and Struck of Strength (SOS) on 4.2.1981 under Army Rule 13 (3) item III (iii) of Army Rules, 1954, he being placed in medical category 'EEE' after the service of 06 years 80 days. The applicant was placed in low medical category 'EEE' due to the disability 'Hysteria (Conversion Reaction) - 300(B)'. Invaliding Medical Board proceedings (AFMSF-16) of the applicant was held at Command Hospital, Western Command, Chandigarh on 4.11.1980, and it was opined that the said disability was neither attributable to nor aggravated by military service. The percentage of his disability was assessed at 20% for two years, which was approved by ADMS HQ PH & HP area Ambala Cantonment on 15.11.1980. On the basis of the Invaliding Medical Board proceedings held on 4.11.1980, the disability pension claim was forwarded to CDA (Pensions) G3 Section, Allahabad, for consideration of awarding invalid pension/gratuity by BEG in its letter dated 26.12.1980, but the same was rejected by the PCDA (Pensions), Allahabad, through its letter dated 17.2.1981 by stating that the disability was neither attributable to nor aggravated by military service. The said decision was communicated to the applicant through BEG Records, Roorkee, in its letter dated 6.3.1981 with an advice to prefer an appeal against the decision of Government of India through the said Office within

six months with effect from 17.2.1981. An appeal dated 8.8.1981 was received from the applicant against the rejection of disability pension and the same was submitted to Government of India, Ministry of Defence, which in its Order-cum-letter dated 23.7.1983 rejected the appeal stating that no reasonable grounds were found to alter the decision already conveyed by the PCDA (Pensions), Allahabad. An option was given to the applicant for preferring final appeal to the Defence Secretary for being considered by the Defence Minister's Appellate Committee on Pension within six months with effect from 23.7.1983. Accordingly, second appeal dated 'Nil' was received and DSS&A Board sent the same through letter No.159871/83 A8 dated 2.11.1983 and was submitted to Government of India, Ministry of Defence, through BEG in its letter dated 24.11.1983. The said second appeal was rejected by the Government of India, Ministry of Defence, through their Order/letter No 6(134)/84/D/(Pen Appellate Committee) dated 19.4.1985. However, yet another appeal dated 12.2.1986 was received from the applicant which was replied by BEG Records vide letter dated 24.2.1986, that the claim of disability pension of the applicant was already rejected. Once again the applicant approached the BEG Records on 1.12.2010 under RTI Act for the grant of disability element and to join Ex-Servicemen Contributory Health Scheme membership, which was suitably replied. The disability pension can be granted to an individual who was invalided out of service on account of a disability attributable to or aggravated by military

service in non-battle casualty and is assessed at 20% or over as per Para-173 of Pension Regulations for the Army, 1961 (Part-I). Since the applicant does not come under the qualification of attributability and aggravability of the disability, he is not entitled to receive disability pension. Invalid Gratuity of Rs.2959.50p admissible as per Para-197 of Pension Regulations for the Army, 1961 (Part-I) was paid to the applicant. Since the disability of the applicant was not covered under the provisions of Para-173 of Pension Regulations for the Army, 1961 (Part-I), he would not be entitled to the disability pension. Therefore, the application should be dismissed being devoid of merits.

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

- 1) Whether the impugned orders dated 6.3.1981, passed by the 3rd respondent, the consequential proceedings of the 1st respondent dated 23.7.1983, the Order of 3rd respondent dated 24.2.1986, and the proceedings of the 1st respondent dated 19.4.1985, are liable to be set aside ?
- 2) Whether the applicant is entitled for disability pension as sought for by him?
- 3) To what relief the applicant is entitled for ?

5. Heard Mr. N. Balamuralikrishnan, Learned Counsel appearing for Mr. S. Mahesh, 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.

6. The Learned Counsel for the applicant would submit in his argument that the applicant served in the army from 16.11.1974 till 3.2.1981 for a period of 06 years 80 days' continuous service and during his enrolment, he was quite fit and healthy and no disease was detected at the medical examination. He would further submit that while undergoing training before BEG for the second time, the applicant developed giddiness and was treated in the Military Hospital, which was diagnosed as 'Hysteria (Conversion Reaction)' and subsequently he was sent to Invaliding Medical Board, as he was categorised in low medical category. He would further submit that when the applicant was not having any disability before joining the armed forces and there was no family background for such a disease, the Invaliding Medical Board ought to have opined that the said disability was attributable to and aggravated by military service. Per contra, it decided that the said disability was not attributable to nor aggravated by military service. He would also submit that the Invaliding Medical Board did not give any reason for the opinion that the disability is not attributable to or aggravated by military service. He would further submit that the Medical Board's opinion is

not sustainable in law in view of the Judgement of Hon'ble Apex Court made in **Civil Appeal No.4949 of 2013 dated 2.7.2013** between **Dharamvir Singh Vs. Union of India and others**. Relying upon the said Judgement, the Learned Counsel for the applicant would insist in his argument that the Invaliding Medical Board did not follow the Entitlement Rules as well as Guidelines to Medical Officers (Military Pension 2012) and in such a case, the opinion of the Medical Board need not be followed. He would further submit that the onus of proof regarding the condition for non-entitlement of the disability pension was that the employer and the claimant has a right to derive benefit of any reasonable doubt, entitled to pensionary benefit, liberally. He would also submit that the Hon'ble Apex Court had reiterated that the reasons for not classifying the disease as arisen during the service should have been explained when it is established that the said disease was not detected at the medical examination prior to the acceptance for service. He would further submit that the 3rd respondent should have differed from the opinion given by the Invaliding Medical Board and directed the Medical Board to conduct Re-Survey Medical Board so as to comply with the Entitlement Rules and Guidelines to Medical Officers (Pension), but it has simply accepted the opinion given by the Invaliding Medical Board and refused pension in its Order dated 6.3.1981 produced in Annexure R-IV. The appeal preferred by the applicant against the said Order before the Government of India dated 8.8.1981 produced in Annexure R-V was

dismissed in the Order dated 23.7.1983 without any discussion, but it had simply confirmed the Order dated 6.3.1981. He would further submit that the second appeal preferred by the applicant before the Pension Appellate Committee, Ministry of Defence, was also dismissed without any appreciation on 19.4.1985 produced in Annexure R-X, and the said Order was communicated by the 2nd respondent in its letter dated 24.2.1986. All these impugned orders passed by the respondents were based upon the wrong opinion given by the Invaliding Medical Board and since the opinion of the Medical Board is not in accordance with law and the tenor of the Judgement of the Hon'ble Apex Court already cited, and therefore, all the impugned orders should have been set aside and the applicant be considered for the grant of disability pension at 20% as opined by the Invaliding Medical Board. He would also submit that the said 20% disability is liable to be broad banded to 50% and, therefore, the appropriate disability pension at 50% may be granted in favour of the applicant. He would further submit that the opinion of the Invaliding Medical Board should have been found defective in view of the Judgement of Hon'ble Apex Court rendered in **Dharamvir Singh's case** since the credence and primacy of the Invaliding Medical Board are put in doubts. In the said circumstances, the facts and circumstances of the case discussed and the principle laid down in the earlier 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, and Om Prakash Singh vs UoI reported in **(2010) 12 SCC 667**, are not applicable to the present sets of facts. Therefore, he would request us to grant the relief of disability pension to the applicant and to allow the application.

7. The Learned Senior Panel Counsel would submit in his argument that the applicant was no doubt affected by the disease 'Hysteria' while he was in service, but the Invaliding Medical Board after elaborately examining him had come to the conclusion that the said disease was constitutional in nature and it had no nexus with the service, since the applicant was only taking training for the proposed service. He would also submit that the applicant was granted with Invalid Gratuity to which he received and the applicant did not raise his little finger for over 27 years, but had come forward with the belated plea that the Invaliding Medical Board was not properly exercising its duties. He would also submit that the applicant did not challenge the proceedings of Invaliding Medical Board held on 4.11.1980, and on that ground itself, the reliefs sought for by the applicant to set aside the impugned orders, fall to the ground. He would also submit that the Invaliding Medical Board had elaborately examined the applicant and had come to the conclusion that the applicant was not entitled to disability pension since the disability was not attributable to nor aggravated by service. He would also submit that the impugned orders were passed by the

respondents on the basis of the opinion given by the Invaliding Medical Board that the disability was not attributable to or aggravated by military service and the disability was assessed at 20% for two years only, and the said Medical Board's opinion has not been challenged and, therefore, the impugned orders cannot be assailed by the applicant. He would also submit that the application is affected by long delay and laches. The 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**, was relied upon by the Learned Senior Panel Counsel. He would also submit that it is a settled law that the primacy and credence of the opinion of the Medical Board shall be given due value and weightage and the Court should not normally interfere with such opinion by substituting its view. He would also submit that the Judgement of Hon'ble Apex Court made in **Dharamvir Singh's case** is not applicable to the facts of the present case since the Invaliding Medical Board had complied with all the formalities by following the Entitlement Rules and Guidelines to Medical Officers. He would, therefore, submit that the Invaliding Medical Board's opinion since not challenged, became final and the impugned orders passed thereon cannot be challenged by the applicant. Therefore, he would request us to dismiss the application as devoid of merits.

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

9. **Points No.1 & 2:** The indisputable facts are that the applicant was enrolled in the Indian Army on 16.11.1974 and after completion of the Basic Training and Trade Training, he was posted to EME Workshop of 50 AD Regiment and thereafter, he was transferred to BEG and was ordered to undergo Basic Training once again.

10. The case of the applicant was that during the said period of training, his health condition deteriorated and he was constantly affected by severe head ache and when he was admitted in Command Hospital, Chandigarh, he was diagnosed as suffering from 'Hysteria' and, therefore, he was referred to Medical Board on 4.11.1980, in which he was invalided out on 3.2.1981. According to the submission of the Learned Counsel for the applicant, the disease Hysteria was unknown to the applicant prior to his service or to his family. The said arduous training given for the second time had caused this menace and, therefore, it should have been considered as attributable to service. However, the Invaliding Medical Board had opined that it was a constitutional nature.

11. Whether the opinion of the Invaliding Medical Board given as the disability, namely Hysteria (Conversion Reaction) was not attributable to or aggravated by military service, but was constitutional in nature, was reached in accordance with the procedures, is the question. No doubt, the applicant did not challenge the Invaliding Medical Board's proceedings in the application. But he had challenged the Orders passed by the respondents in consequence of the opinion given by the Invaliding Medical Board. The applicant relied upon a latest Judgement of Hon'ble Apex Court rendered in **Dharamvir Singh Vs. Union of India and others**, reported in **Civil Appeal No.4949 of 2013 dated 2.7.2013**. According to the said Judgement, the Medical Board consisting of Doctors should have adhered to certain rules and procedures from Entitlement Rules and the Guidelines to the Medical Officers (Pension). The relevant passage runs as follows :-

"28. A conjoint reading of various provisions, reproduced above, makes it clear that :

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service, [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. (Rule 14(c)).

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. (14(b)).

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 - "Entitlement : General Principles", including paragraph 7, 8 and 9 as referred to above."

12. The principles laid down by Hon'ble Apex Court would enlighten the Doctors constituting the Medical Board to follow the principles so as to promptly reach a correct assessment. As far as the Invaliding Medical Board proceedings conducted in this case, produced in Annexure R-I is concerned, it clearly mentions the opinion of the Medical Board that the disability did not exist before entering into the service of the applicant and the family history would disclose that there was no fits or mental illness with the family members. Even though all these particulars given, the presumption of the disability 'Hysteria' being attributable to or aggravated by military service was rebutted by the opinion of the Medical Board by stating that the disease is constitutional, in nature. The said opinion of the Medical Board would go

to show that the condition of the applicant was such that he was affected by hysteria, being a constitutional disease.

13. At this juncture, we have to consider the submission of Learned Senior Panel Counsel with respect to the principles laid down by Hon'ble Apex Court in **A.V. Damodaran's case**. He would strenuously argue that the opinion of the Medical Board should be given primacy and credence and it should not be slightly interfered. He would also point out that the Medical Board has given correct particulars in respect of the family history of the applicant and the applicant was not having such disability prior to his service, but came to the conclusion that the disability was not attributable to or aggravated by service since it was constitutional in nature. The opinion as to constitutional nature of the disability regarding Hysteria could be in any service, including civil service. The applicant should have prima facie shown that the disability was not due to its constitutionality. No doubt, the Entitlement Rules would provide that the posting at field area, high altitude area, active service would concede the disability as attributable to or aggravated by military service. In this case, the applicant was stated to have affected by the disability during the training period in a peace station. Therefore, the presumption cannot be drawn as per the Entitlement Rules. It is a settled law as laid down by **A.V. Damodaran's case**, which are as follows :-

"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."

14. In view of the aforesaid factual aspect and the principles laid down in A.V. Damodaran's case, the opinion given by the Invaliding Medical Board that the disability 'Hysteria (Conversion Reaction)' as constitutional in nature, cannot be assailed by the applicant. Moreover, the applicant did not challenge the opinion of the Invaliding Medical Board in this application. The challenge placed by the applicant was against the Orders passed by the respondents dated 6.3.1981 produced in Annexure R-IV, dated 23.7.1983 produced in Annexure R-VII, dated 19.4.1985 produced in Annexure R-X, and dated 24.2.1986, a letter written by the 2nd respondent produced in

Annexure R-XII. All these proceedings and the correspondence were dated during 1980 to 1986. The applicant after being invalided out of service, had joined civil employment, as admitted in the course of argument. He did not elect to challenge those orders all these years, if really, he was aggrieved by the said orders. The long delay and laches on the part of the applicant is fatal to the cause of the applicant. The condonation of delay was not sought for the entire delay from 1980 onwards, by the applicant. Therefore, the claim of the applicant is also affected by delay and laches.

15. Even otherwise, the Invaliding Medical Board would find that the disability of 'Hysteria (Conversion Reaction)' was assessed at 20% disability for the duration of two years as on 15.11.1980. The applicant did not seek for any Re-Survey or Re-Assessment Medical Board in order to assess his then disability whether it was aggravated or diminished. Admittedly, the applicant was doing a civil employment all these years. In the said circumstances, it could be presumed that he became alright and was fit enough for doing the civil employment and, therefore, there would not be any disability for life. In the said background, if any Re-Assessment Medical Board is now ordered to assess the present disability of the applicant, it would be an empty formality and it would be of no help to either parties. In the said circumstances, we are of the considered view that the opinion of the Invaliding Medical Board that the disability 'Hysteria (Conversion Reaction)'

was only constitutional nature, need not be interfered in the light of the principles laid down by the Hon'ble Apex Court. For the above reasons, both the points are decided against the applicant.

16. **Point No.3:** In view of our discussion held above, the impugned Orders passed by the respondents dated 6.3.1981, 23.7.1983, 19.4.1985 and 24.2.1986, sought to be set aside by the applicant are not liable to be set aside and the disability pension asked for by the applicant is not grantable. Therefore, the claim of the applicant for the reliefs set out in the application are liable to be dismissed.

17. In fine, the application is dismissed as devoid of merits. However, there is no order as to costs.

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

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

23.7.2013
(True Copy)

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

Internet : Yes / No
Internet : Yes / No

To,

1. The Secretary to Government of India,
Ministry of Defence,
New Delhi.
2. The Deputy Commandant,
Bengal Engineer Group and Centre,
Roorkee 247 667.
3. The Senior Records Officer (OIC),
BEG Records Office, Roorkee.
4. The Chief Controller of Defence Accounts,
Allahabad, Uttar Pradesh.
5. Mr. S. Mahesh,
Counsel for applicant.
6. Mr. B. Shanthakumar, SPC
Counsel for respondents.
7. OIC, Legal Cell (Army),
ATNK & K Area HQ,
Chennai.
8. Library, AFT, Chennai.

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

O.A.No.90 of 2012

23.7.2013