

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No. 95 of 2012

Monday, the 17<sup>th</sup> day of June 2013

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

AND

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

Pagolu Nagarjuna Rao,  
S/o Venkataswamy, Recruit No.15663874M  
R/o Siripudi (Village & Post)-522329,  
Nagaram Mandal, Guntur District,  
Andhra Pradesh.

.... Applicant

By Legal Practitioner:  
M/s. K. Ramakoteswara Rao  
B. Naganjaneyulu

vs.

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

2. The Chief of Army,  
Government of India, New Delhi.

3. The Principal Controller of Defence  
Accounts (Pension), Allahabad,  
Uttar Pradesh.

4. The Record Officer,  
Signal Abhilekh Karyalay,  
Signals Records,  
Post Bag No.5,  
Jabalpur-482001,  
Madhya Pradesh.

.... Respondents

By Shri B.Shanthakumar, SPC

**ORDER**

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

1. The petitioner prays for disability pension from the date of his discharge with interest.

2. The petitioner joined the army on 31.10.1996 and was invalided out of service under Army Rule 13(3)(III)(iii), i.e., "having been found medically unfit for further service" with effect from 12<sup>th</sup> May 1998 on account of "Generalised Seizure". His claim for pension was not accepted by PCDA on account of the ID not being attributable to nor aggravated by service. He filed a writ petition in the Andhra Pradesh High Court W.P.No.21629 of 2001 praying for disability pension. The Andhra Pradesh High Court in its order dated 27<sup>th</sup> June 2002 disposed of the above writ petition with the following observation:

" Now that the petitioner is served with the copy of the order dated 5.6.1999, it shall be open to the petitioner to prosecute such remedies as are open to him in law. If the appeal is preferred against the said order dated 5.6.1999, within a period of two months from today, the appeal shall be entertained as having been preferred within the stipulated time. "

3. Thereafter, the petitioner filed two appeals which were rejected by the respondents.

4. The petitioner through this application and pleadings of the learned counsel Mr. K.Ramakoteswara Rao would state that the "Generalised Seizure" was detected when the petitioner was in the army. He was referred to a Medical Board who assessed his disability as 20% and opined that the disease was constitutional in nature and was not attributable to nor aggravated by service. The learned counsel would plead that the Medical Board certified in para 7 of Part III of the Medical Board Proceedings dated 11<sup>th</sup> February 1998 that the petitioner was suffering from Generalised Seizure, but was in good bodily/health and the Medical Board recommended his case for commutation of pension. The learned counsel would derive the meaning out of this recommendation that the Medical Board had recommended disability pension of the petitioner. He would go on to argue that the third respondent, i.e., PCDA is only an administrative authority and not an expert to scrutinise the decision of the Medical board and since the Medical Board according to the learned counsel had recommended disability pension, the same should have been granted. The learned counsel would cite the case of A.V. Damodaran vs. UOI (2009) 2 SCC (L&S) 586, in which it has been held that the opinion of the Medical Board is entitled to due weightage, value and credence which the respondents have failed to follow. He would further argue that the Entitlement Rules for Casualty Pensionary Awards 1982 Appendix-II stipulates that there

must be causal connection between disability or death and Military Service for attributability or aggravation to be conceded. In the petitioner's case, the Medical Board stated that the ID existed before joining the Army. The petitioner's case is that the ID was aggravated due to conditions of military service and therefore the ID should have been assessed to be aggravated by service. The petitioner would therefore pray that the impugned proceedings of the first respondent, vide their letter No.F.No.6(394)/2004/D (Pen.A&AC), dated 15<sup>th</sup> September 2006 be set aside and the petitioner be granted disability pension with interest from his date of discharge, i.e., 12<sup>th</sup> March 1998.

5. The respondents would state that the Invaliding Medical Board of the petitioner was held on 11<sup>th</sup> February 1998 at Military Hospital, Jabalpur which recorded his disability as neither attributable to nor aggravated by military service and the disablement was assessed at 20% for two years by the Invaliding Medical Board. The disability pension claim in respect of the petitioner was sent to PCDA (P), Allahabad which rejected it on account of ID not being attributed to nor aggravated by service. The same was communicated to the petitioner by Signal Records. The petitioner's writ petition W.P.No. 21629 of 2001 in the Andhra Pradesh High Court was disposed of with the direction that the respondents to take action on the appeal from the petitioner. The petitioner's two appeals were carefully examined by the appropriate committees and were rejected. The facts of rejection were

communicated to the petitioner. On the issue of commutation of pension, the respondents would state that the recommendation with regard to commutation of pension is no indication that the IMB is recommending disability pension. The IMB only gives its opinion with regard to attributability or aggravation of the ID. In the light of the above, the respondents pray that the application be dismissed being devoid of merit.

5. After hearing both sides and perusing documents we find that the sole point that needs to be determined is,

“Whether the petitioner is eligible for disability pension or not?

6. We perused the Invaliding Medical Board proceedings held on 11<sup>th</sup> February 1998. The ID “Generalised Seizure” started on 22<sup>nd</sup> October 1997 at Jabalpur. In response to a question in para-3 of the Medical Board’s Proceedings, *“Did you suffer from any disability mentioned in Question No.2 or anything like it before joining the Armed Forces?”*, the petitioner gave the answer, “No”. Psychiatrist/Lieutenant Colonel Mr.B. Kar in his opinion stated,

*“ This 20 years old recruit has clinical/EEG and CT evidence of Seizure disorder and is unlikely to be a fit soldier. Rec to be placed in Med Cat ‘EEE’ and to be invalided out of service. ”*

The opinion of the IMB was that the ID was not attributable to service and has not been aggravated by service and is not

connected to service. The disablement was assessed to be 20% and the probable duration of this degree of disablement was assessed to two years. The Medical Board also attached a Certificate for commutation of pension which states,

*" The individual is suffering from GENERALISED SEIZURE (780 c) but as otherwise in good bodily/health and has to prospect of an average duration of life. Commutation of pension is his/her case is therefore 'recommended for acceptance'. "*

8. We are satisfied on perusal of the IMB Proceedings that the Medical board did not recommend disability pension of the petitioner. Certificate for commutation of pension is associated with average duration of life and would be applicable in the event the person being released from service was in receipt of normal service pension. There is no provision for commutation of disability pension and therefore, this Certificate would not apply to commutation of disability pension. Therefore, we are of the view that the petitioner cannot lean against this Certificate to claim that the Medical Board had recommended disability pension.

9. We now turn to the opinion of the Medical Board. The petitioner has stated that the ID occurred during his service. When we perused the Medical Board Proceedings, we find that the Medical

Board has recorded that the disability existed before entering into service, but could not have been detected during enrolment. Aggravation by service may be conceded if the conditions laid down in Appendix-II to Entitlement Rules are fulfilled which are as under:

" 2. *Disability or Death shall be accepted as due to Military*

*Service, it is certified that—*

(a) *The disability is due to wound, injury or disease, which-*

(i) *is attributable to Military Service, or*

(ii) *existed before or arose during Military Service and has been and remains aggravated thereby.*

(b) ....

3. *There must be causal connection between disability or death and Military Service for attributability or aggravation to be conceded.*

4. *In deciding on the issue of entitlement all the evidence, both direct and circumstantial, will be taken into account and benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the Claimant in field service case. "*

In order to examine as to whether there is a causal connection between the disability and the disease, we turn to Amendment to Chapter VI and VII of Guide to Medical Officers 2008 in which

"Epilepsy" which is also known as a seizure disorder has been explained thus:

*"33. Epilepsy: This is a disease which may develop at any age without obvious discoverable cause. The persons who develop epilepsy while serving in forces are commonly adolescents with or without ascertainable family history of disease. The onset of epilepsy does not exclude constitutional idiopathic type of epilepsy but possibility of organic lesion of the brain associated with cerebral trauma, infections (meningitis, cysticercus, encephalitis, TB) cerebral anoxia in relation to service in HAA, cerebral infarction and hemorrhage, and certain metabolic (diabetes) and demyelinating disease should be kept in mind.*

*The factors which may trigger the seizures are sleep deprivation, emotional stress, physical and mental exhaustion, infection and pyrexia and loud noise. Acceptance is on the basis of attributability if the cause is infection, service related trauma.*

*Epilepsy can develop after time lag/latent period of 7 years from the exposure to offending agent (Trauma, Infection, TB). This factor should be borne in mind before rejecting epilepsy cases.*

*Where evidence exists that a person while on active service such as participation in battles, warlike front line operation, bombing, siege, jungle war-fare training or intensive military training with troops, service in HAA, strenuous operational duties in aid of civil power, LRP on mountains, high altitude flying, prolonged afloat service and deep sea diving, service in sub-marine, entitlement of*



*aggravation will be appropriate if the attack takes place while serving in those areas. "*

10. We observe that epilepsy can develop after time lag of seven years from the exposure to the offending agent. In the instant case, the petitioner had been in the Army for just one year when this disease started. Therefore, we find there is sufficient justification for the IMB to state that the disease existed before the petitioner was enrolled. At the time of onset of the disease, i.e., in October 1997, the petitioner was not engaged in any battle or war like front-line operation, jungle war-fare training or service in High Altitude Area or strenuous operational duties and consequently we find that the petitioner's claim that there was a causal connection between the ID and military service has no legs to stand. Accordingly, we are of the view that the opinion of the Medical Board does not need to be interfered with by this Tribunal and the petitioner is not eligible for disability pension. The point thus is answered against the petitioner.

11. In fine, the petition is dismissed being devoid of merit.

No costs.

Sd  
JUSTICE V. PERIYA KARUPPIAH  
MEMBER (JUDICIAL)

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

**17.06.2013**  
**(true copy)**

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

Internet : Yes / No  
Internet : Yes / No

To,

1. Union of India,  
Rep. by its Secretary,  
Ministry of Defence, New Delhi.
2. The Chief of Army,  
Government of India, New Delhi.
3. The Principal Controller of Defence  
Accounts (Pension), Allahabad,  
Uttar Pradesh.
4. The Record Officer,  
Signal Abhilekh Karyalay,  
Signals Records,  
Post Bag No.5,  
Jabalpur-482001,  
Madhya Pradesh.
5. M/s. K. Ramakoteswara Rao  
B. Naganjaneyulu  
Counsel for Petitioner.
6. Mr. B. Shanthakumar, SPC  
Counsel for Respondents.
7. OIC, Legal Cell (Army)  
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)**

**O.A.No.95 of 2012**

**17.06.2013**