

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

M.A.No.70 of 2014
and
O.A. No.44 of 2014

Wednesday, the 18th day of March 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)
AND
THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Service No.SS-23805,
Captain R. George Prabhu (Retd)
S/o Late V.Rajendran Nadar
aged about 69 years
Flat No.50, 5th Floor, Victoria Garden
20, Jawaharlal Nehru Road
Chennai-600 066.

... Applicant/Applicant

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

vs.

1. Union of India
rep. by The Secretary
Government of India
Ministry of Defence
New Delhi-110 011.

2. The Addl Dte Gen Pers Services
Adjutant General's Branch
Army Headquarters, DHQ Post
New Delhi-110 011.

3. The PCDA (P)
Draupathi Ghat
Allahabad (UP), Pin-211 014.

... Respondents/Respondents

By Mr. N. Ramesh, CGSC

ORDER

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

1. This application is filed by the applicant seeking to condone the delay of **13509** days caused in filing O.A.44 of 2014, in time.
2. Heard Mr. M.K.Sikdar, learned counsel for the applicant and Mr. N. Ramesh, learned CGSC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for respondents.
3. The Original Application is filed to call upon the respondents to produce the records in respect of the (i) impugned order No.B/41021/R/AG/PS-4(PGC), dated 22nd January 2004 and (ii) impugned order No.12656/SS-23805/T-6/MP 5 (b), dated 26th May 2011 passed by the 2nd respondent and quash the same and to direct the respondents to constitute a Re-Survey Medical Board (RSMB) at Chennai to assess the disability of the applicant and also to direct the respondents to grant war injury/disability element of pension for life to the applicant with interest and all consequential monetary benefits.
4. The applicant was enrolled in Indian Air Force on 26.6.1963 as an Airman and subsequently, commissioned as Short Service Commission (SSC) on 06th September 1970. He had lost his right

hand fingers while throwing grenade on 18.8.1971 on duty in a field area (NEFA). He was released from SSC (Army) service on 19.09.1976 in the rank of Captain. He was not brought before any Release Medical Board. The applicant submits that he served in the Army for 13 years 02 months and 22 days and was granted service element of pension, but denied disability element of pension and he came to know about that, when he received PPO No.M/489 of 1979. He represented before the respondents and also before the Hon'ble President of India, but all went in vain. He sought for grant of disability pension by constituting a Re-Survey Medical Board but the same was not considered. He again represented on 01.08.2002 before the Hon'ble Prime Minister of India, but he could not get any reply. Further, he represented before the respondents on 01.10.2003, 01.01.2004, in 2010 and on 23.03.2011 for constituting a Medical Board, but the same was rejected by the 2nd respondent by the impugned order dated 22.01.2004 stating that, it was not possible to examine the matter at that belated stage and by impugned order dated 26.05.2011, stating that, it was unable to process his case for grant of disability pension without service and medical documents at that belated stage.

5. Therefore, not satisfied with the disposal of his plea by the respondents, he had approached this Tribunal for a direction to constitute a Re-Survey Medical Board (RSMB). However, due to unavoidable circumstances and ill-health, a delay of **13509** days has crept in filing of this application which is neither wilful nor wanton, but only due to the above said circumstances. The applicant therefore, requests that this application may be allowed.

6. The respondents filed a counter which would be in brief as follows:

The applicant's commission in the Army and the release from Army Service are not denied. The applicant being a non-pensioner, his service documents were destroyed after the stipulated period of 15 years as per DSR Para 619 (c). Since the applicant filed this application for disability pension after a long gap of 38 years, his grievance cannot be established and his service as well as medical documents had been destroyed. In the case between **Hans Ram and Union of India (CM No.2063 of 1993 and CW No.1267 of 1993, dated 31.07.1995)**, it was held that, "if such petitions are entertained, it would tantamount to opening a Pandora Box creating serious financial and other complications". In the case of **Bachan vs. UOI (W.P.No.621 of 1989)**, it was held by a Division Bench of Delhi High Court, that if

the claim for pension is otherwise just and legal, it may be allowed limiting the same to a period of three years before the date of filing of petition, but if the applicant filed an application after a period of 15 years, he would create a situation disentitling him to any relief. The applicant has not explained any valid reason for causing delay in filing the present application. Therefore, the respondents pray that this application may be dismissed.

7. The respondents have also raised objections in the additional counter which would be as follows:

The applicant's averment that after completion of his SSC tenure, he was not brought before the Release Medical Board (RMB) is denied. Every individual on release from Army is supposed to undergo Medical Board/RMB, as per his categorization. As per the Certificate issued by the applicant's Commanding Officer (7 MADRAS), he was released in medical category SHAPE-1 and therefore, he is not entitled for any kind of disability. Further, his Discharge Book issued by the Army HQ at the time of his discharge from service also shows that his medical category to be SHAPE-1. In the absence of any medical documents, the applicant is not entitled for disability pension. As per Para 53 of Pension Regulations for the Army, 1962 (Part-I), disability pension is determined by the competent authority, if the

officer is in low medical category at the time of retirement/release by asking the individual to appear before RMB. In the judgment of High Court of Punjab and Haryana in the case between **Ex Nk Umed Singh vs. Union of India (CWP No.727 of 2013, dated 14.05.2014)**, the claim of the applicant was rejected for the reason that there were no records available in respect of cause of discharge of the Armed Forces Personnel or their legal heirs cannot draw any adverse inference of discharge being attributable to or aggravated by military. So also in this case, no adverse inference can be taken in the absence of medical records. The applicant was released in Medical Category SHAPE-I and as per PCDA (P) Allahabad Memorandum No.G1/M/41026, dated 13.01.1984, the officer was granted service pension with effect from 19.09.1976 for life to which he was entitled to, whereas he is not entitled to disability pension. Therefore, in the facts and circumstances, the respondents request that this application for condoning the delay of **13509** days in filing the O.A. may be dismissed.

8. On the above submissions made on either side, we find the following points for consideration in this application:

(1) Whether the reasons stated by the applicant for condoning the delay in filing the Original Application are acceptable?

(2) Whether the delay of 13509 days can be condoned?

(3) To what relief the applicant is entitled for?

9. **Point Nos.1 and 2:** The applicant in Original Application has filed an affidavit in support of the application to condone the delay of 13509 days caused in filing the Original Application and pray for taking the O.A. on file for admission. In the Original Application, the applicant sought for grant of war injury/disability element of pension for life to the applicant after constituting a Re-Survey Medical Board at Chennai in respect of his disability consequent to the quashment of the impugned orders dated 22.01.2004 and 26.05.2011. The reasons stated by the applicant for his long silence in filing this application are that his representations were not considered by the Hon'ble President of India and the subsequent representation before the Prime Minister of India 01.08.2002 and other various representations before the respondents on 01.10.2003, 01.01.2004, in 2010 and on 23.03.2011 were not considered and therefore, the applicant could file this application belatedly and also due to his ill-health and accordingly a delay of 13509 days were caused in filing the

Original Application. The respondents have denied those reasons by stating that the representations made by the applicant from 2001 were promptly replied and the applicant did not file his case since he knew about the demerits of his claim. It is also submitted that the delay cannot be condoned since the applicant was guilty of laches. It is further submitted that the applicant's records have been weeded out as per Para 619 (c) of Defence Service Regulations and there could not be any record available to consider the claim of the applicant. However, the said objection was refuted by the applicant that the documents of the applicant should be maintained under Para 595 of DSR 595 for 50 years and the period of 15 years as per Para 619(c) of DSR is not applicable to the present case and therefore, the applicant has got a case in the Original Application.

10. Considering the same, we understand that the applicant served in the Army and retired as Captain as per order dated 26.06.1976. Thus, he was released from Short Service Commission on 19.09.1976 after completing a total service of 39 years 2 months and 22 days. The applicant was granted service pension as OR from the year 1977 onwards. The disability pension sought for by the applicant was denied by stating that the applicant was not having any disability. It is the case of the

applicant that he was pursuing the disability pension through various representations. But no document has been produced to show that the applicant represented for disability pension prior to 2001. The applicant was admittedly in SHAPE-1 at the time of his release from SSC. However, he has produced a Medical Category Certificate and an Injury Certificate dated 30.01.1977 and 11.08.1976 respectively issued by Officer Commanding of the 7th Battalion, Madras Regiment. Even in the said Certificate, his medical category at the time of his release was mentioned as SHAPE-1. Loss of middle and terminal phalanges of the index finger and terminal phalanx of the middle finger on his right hand are stated to be disabilities sustained by the applicant. The Certification of the Commanding Officer would also go to show that the said injury is attributable to service, but it has no effect for he being released in SHAPE-1. Of course the medical opinion shall normally be given by medical experts in respect of any disability attributable or aggravable and with regard to medical category of a soldier or officer whenever he is referred. It is strange as to how a Commanding Officer is issuing a certificate containing medical opinion in respect of an injury sustained by the applicant. In order to clarify the said Certificate issued by a Commanding Officer, the original medical records of the applicant

are certainly necessary in the Original Application. Similarly the records regarding COI convened to investigate the incident causing alleged disability if any, are also important. But the answer is that the medical documents were weeded out as per Para 619(c) of DSR after completion of 15 years. The copies of proceedings for weeding out these documents were produced in the form of an additional typed set. The said proceedings dated April/May 1993 would show that the documents belonging to the service of applicant listed, in Serial No.38, were also weeded out. However, the learned counsel for the applicant would submit that as per Para 595 of DSR, all the documents of the applicant should be maintained for 50 years since the applicant is an OR pensioner. As regards the said contention we find no dispute that for a OR pensioner, his pension documents should be maintained for 50 years as per para 595 of DSR. The applicant being a service pensioner, his pension documents would be maintained for 50 years. The required documents in this case would be the other documents including the medical records of the applicant which are covered by the provisions of Para 619(c) of DSR Rules. It is not disputed by the respondents that the pension documents of the applicant are still maintained since 50 years have not been elapsed. In the said circumstances, we find no substance in the

arguments advanced on the side of the applicant in respect of weeding out of the records of the applicant.

11. When these vital medical records, if any, of the applicant are not available for perusal of this Court since they were weeded out as per rules, the case of the applicant that the loss of middle and terminal phalanges of the index finger and terminal phalanx of the middle finger on his right hand was due to war injury or in a disability attributable to service cannot be decided. Though the applicant has shown that he pursued the claim of disability pension from the year 2001 onwards, he kept quiet from 1977 till 2001. This shows his laches in his claim for disability pension. Furthermore, he did not prefer any claim before any appropriate forum towards disability pension except for sending representations from the year 2001. The respondents have acted in accordance with the rules and have weeded out the records as per appropriate rules and the said act of the respondents will not give rise to any adverse inference against their act or towards their case.

12. In the said circumstances, the judgment of Hon'ble High Court of Delhi made in **Hans Ram and Union of India (CM No.2063 of 1993 and CW No.1267 of 1993, dated**

31.07.1995), is much relevant on this aspect. The relevant passage would be as follows-

"The respondents have stated on oath that the service record of the petitioner is not available to verify the correct facts and place the same before the Court. It is also submitted that if such petitions are entertained it would tantamount to opening a pandora's box creating serious financial and other complications.

It is true that ordinarily in matters relating to pension the writ courts do not deny the relief on account of delay merely. A sympathetic and liberal view is always taken. Indulgence is invariably shown. In the case of Bachan Kaur Vs. Union of India (W.P.621/89) decided on 13.4.85, a Division Bench of this Court has taken the view that a writ petition claiming pension if the claim be otherwise just and legal may be entertained and allowed limiting the same to a period of three years before the date of filing of the petition. In the present case the petitioner has on account of culpable delay and laches extending over a period of 25 years himself created a situation which disentitles him to any relief. The service record of the petitioner is not available. It is not known as to why and in what circumstances the petitioner was paid merely the gratuity and yet felt satisfied therewith though no pension was allowed. If only the petitioner would have approached the Court within a reasonable time, the respondents could have been directed to search and produce the relevant service record of the petitioner enabling a just decision of the petitioner's claim, which is not possible in the present case. The entire fault is of the petitioner. However sympathetic we may be with the petitioner, sitting as a writ court, we cannot grant relief of pension to the petitioner merely as a charity or bounty in the absence of relevant facts being determinable and

relevant comments available. For the foregoing reasons the petition is dismissed though without any order as to costs."

13. Similarly, a judgment of Punjab and Haryana High Court in the case between **Ex Naik Chander Singh** and **UOI & others** decided on 04th November 2007 is also on this point in which the service records destroyed after the retention of 15 years from the date of discharge would be sufficient to reject the claim of the applicant based on those records.

14. Applying the principles laid down in the above said judgments, the court would be handicapped to order constitution of any Review Medical Board as asked for by the applicant after presuming loss of phalanges of the applicant in his right hand fingers without perusing the relevant medical records which are not available. No adverse inference can be taken against the respondents especially when the documents of the applicant were weeded out as per rules. The certificate of the Commanding officer produced by the applicant as well as the Discharge Book shows that he was released in SHAPE-1 at the time of his release. Furthermore, the reasons stated by the applicant for condoning the long delay of 13509 days are not acceptable. No document has been produced to prove his ill-health which prevented him from launching a claim before an appropriate forum. If at all ,

condonation of delay is ordered on humanitarian consideration, it would be amounting to opening of Pandora's Box which would not in any way help the applicant also. Therefore, the delay of 13509 days cannot be condoned by this Tribunal in order to enable the Original Application to be taken on file. No purpose will be served even if the condonation of such a huge delay is ordered on equitable ground. Therefore, we are not inclined to condone the delay of 13509 days caused in filing the Original Application.

15. Accordingly, the application is dismissed. In view of the dismissal of the application for condonation, the Original Application deserves dismissal and accordingly the Original Application is also dismissed. No costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

18.03.2015
(True copy)

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

Internet : Yes/No
Internet : Yes/No

To:

1. The Secretary
Government of India
Ministry of Defence
New Delhi-110 011.

2. The Addl Dte Gen Pers Services
Adjutant General's Branch
Army Headquarters, DHQ Post
New Delhi-110 011.

3. The PCDA (P)
Draupathi Ghat
Allahabad (UP)
Pin-211 014.

4. M/s. M.K. Sikdar & S.Biju
Counsel for applicant.

5. Mr. N. Ramesh, CGSC
For respondents.

6. OIC, Legal Cell, ATNK & K Area, Chennai.

7. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

M.A.No.70 of 2014
and
O.A. 44 of 2014

Dt: 18.03.2015