

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.109 of 2014

Monday, the 09th day of March 2015

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

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

15378514-P, Ex-Signal Man
E. Ganesan, aged 43 years
Vettalaikaranur (Kattuvalavu)
Village-Kullappa Naickanpatty
Post Office-Kotta Goundampatty
Taluk-Omalur, Salem District
Pin-636 011.

.. Applicant

By Legal Practitioners:
M/s. M. Selvaraj & V.Soundar

VS.

1. Union of India,
Rep. by its Secretary to
Government of India
Ministry of Defence
New Delhi-110 011.

2. Chief of Army Staff
Army Head Quarters (AHQ)
Defence Head Quarters (DHQ)
Integrated Head Quarters (IHQ)
New Delhi-110 011.

3. The Chairman
 Defence Ministers Appellate
 Committee on Pension (DMACP)
 Ministry of Defence
 New Delhi.

4. The Chairman
 Appellate Committee on First Appeal
 Addl. Dte Gen Pers Service 4(d)
 Adjutant Generals Branch
 Army Head Quarters
 DHQ PO: New Delhi-110 011.

5. Principal Controller
 Defence Accounts (Pension)
 Droupathi Ghat
 Allahabad
 Uttar Pradesh.

6. The Officer i/c Records Signals
 Record Signals,
 PIN-908 770
 C/o 56 APO.

7. The Commandant
 President Medical Board
 Base Hospital,
 Delhi Cantt-10.

8. President Medical Board
 Command Hospital AF
 Bangalore-560 007.

9. The Commanding Officer
 24, Infantry Division
 Signal Regiment,
 C/o 56 APO.

.... Respondents

By Mr. V. Kadhirvelu, CGSC

ORDER

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

1. This application is filed by the applicant for setting aside the orders dated 04.09.2007 on the file of 7th respondent, the discharge order dated 06.10.2007 on the file of 6th respondent, the order of 4th respondent dated 25.09.2009 as confirmed by order of 3rd respondent dated 30.11.2013 and thereby directing the respondents to re-instate the applicant into service or to sanction the disability pension with the rounding off facility from the date of discharge from service.

2. ***The facts contained in the application filed by the applicant***

would be as follows: The applicant was enrolled as Sepoy in Indian Army on 30.04.1992 and he served in various places both in peace and field stations and he was discharged from service on 06.10.2007 on invalidation. The applicant was physically fit at the time when he was enrolled in the army. When the applicant was serving in Meerut, he was admitted in military hospital for treatment and the applicant was placed under low medical category by the 7th respondent for the disease "Schizophrenia F-20". He was placed in low medical category (permanent) and was invalided out from service with effect from 06.10.2007. The claim of the applicant for disability pension was

rejected by the respondents by stating that the disability "Schizophrenia F-20" was neither attributable to nor aggravated by military service. Against the said decision, the applicant preferred an appeal before 5th respondent and the same was also rejected by its order dated 25.09.2008. The applicant preferred Second Appeal before the 3rd respondent on 23.06.2012 and since there was no reply, he filed an application in O.A.No.02 of 2013 before this Tribunal and this Tribunal had directed the 4th respondent to dispose of the Second Appeal within a time frame as fixed by this Tribunal. While disposing the 2nd appeal the 3rd respondent had constituted a Re-Survey Medical Board and the applicant was examined and on the basis of the report, the claim for disability pension was rejected and the appeal was dismissed for the reason that the disability was not attributable to or aggravated by military service. The applicant has, therefore, no option except to file this application to challenge the aforesaid orders and for re-instatement of the applicant into service or to grant the disability pension. Therefore, the application may 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 30.04.1992 and was invalided out of service on 06.10.2007 under Army Rule 13(3) Item III (iii) in low medical category for the

disease "Schizophrenia F-20" after having rendered 15 years and 159 days service in the Army. He was granted service pension vide PPO No.S/037895/2008 (Army) dated 11.07.2008. In the Invaliding Medical Board held on 14.09.2007 at Base Hospital, Delhi Cantonment, his disability "Schizophrenia F-20" was opined as neither attributable to nor aggravated by military service and not connected with military service. However the percentage of disability for the said ID at 50%. Therefore, the disability pension was rejected with an advice to prefer an appeal, if the applicant wanted to do so within six months from the date of receipt of the letter. The applicant preferred an appeal against the decision of the competent authority which was forwarded to the competent authority and after examination of the case in detail, the competent authority rejected the appeal. The application dated 29.10.2009 seeking information regarding his disability under RTI Act was addressed to respondents and the same was suitably replied by Signals Records on 18.11.2009. After a lapse of three years, the applicant preferred a petition dated 23.06.2012 against the decision of the First Appeal Committee and the same was suitably replied requiring certain replies to the queries raised. The applicant is not entitled to disability pension as per Rule 173 of Pension Regulations for the Army, 1961 Part-I. Since the disability was constitutional, it was neither attributable to nor aggravated by military service as opined by the medical authorities, the

applicant is not entitled for disability pension. Any disability pension even if ordered cannot be broad banded since the rounding off benefits are applicable to those personnel who were invalided out from military service on medical grounds on or after 01.01.1996. An Original application was filed in O.A.No.02 of 2013 before this Tribunal to set aside the opinion of the IMB and to allow him to continue in service and this Tribunal had directed the respondents to dispose of the Second Appeal within a period of two months from the date of receipt of copy of the order. On the basis of the said order, the Signals Records processed the case along with the relevant documents by holding Review Medical Board and on its opinion, the appeal was dismissed on 07.07.2014. The present application has been filed by the applicant challenging the said order with the same reliefs of re-instatement into service or to grant disability pension from the date of his discharge. The Appeal Medical Board constituted at Command Hospital (AF), Bangalore had also opined that the disability "Schizophrenia F-20" was neither attributable to nor aggravated by military service. Therefore, the application filed by the applicant may be dismissed.

4. ***The reply of the applicant in the rejoinder would be as follows:*** The disability, "Schizophrenia F-20" was contracted by the applicant in field service area Tenga during 03.07.1997 to 08.02.2001

but it was found set in Meerut. The applicant was sent to field area from March 2002 to July 2003 due to demobilization of forces to Pakistan border for augmentation/war activation and the applicant suffered stress and strain during that period and the same was not scrutinized by the successive Medical Boards. Admittedly, the applicant was not having the said disability, "Schizophrenia F-20" before entering the military service and there was no family history and mental disorder in any members of the family and the said facts were not considered by the respondents. The applicant sustained the disability within one year from the date of transfer from the field area which was also not considered by the Medical Board. Even though the disability was detected during 2004, the actual onset of the ID was much earlier while he served in the field area and the reason given by the respondents that the onset of ID at peace area could not be considered for attributability is therefore not correct. The applicant was placed in low medical category due to disability, "Schizophrenia F-20" which was not constitutional nor the applicant had that disability before his enrolment. Therefore, the objections raised by the respondents may be rejected and the application may be allowed.

5. On the above pleadings, we framed the following points for the disposal of this application:

(1) Whether the relief of re-instatement as asked for by the applicant is grantable?

(2) Whether the applicant is entitled for disability pension and if so it be broadbanded in terms of Government of India letter dated 31.01.2001?

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

6. We heard the arguments advanced by Mr.M.Selvaraj, learned counsel for the applicant and Mr.V. Kadhirvelu, learned CGSC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for respondents. We also perused the documents produced on either side as well the written arguments.

7. We have anxiously considered the submissions made on either side.

8. **Point Nos.1 and 2:** The facts that the applicant was enrolled in the Army on 30.04.1992 as Sepoy and was invalided out of service on 06.10.2007 for the disability "Schizophrenia F-20" under Army Rule 13 (3) Item III (iii) in low medical category with effect from 06.10.2007 have not been disputed. It is also not in challenge that the applicant was granted with service pension and he is regularly receiving the said pension.

9. The disability caused for the invalidment of the applicant was "Schizophrenia F-20". The Invaliding Medical Board constituted on 14.09.2007 had examined the applicant and had come to the conclusion that the disability firstly started on 06.07.2004 at Meerut and the said disability "Schizophrenia F-20" was neither attributable to nor aggravated by military service and not connected with military service. However, the said disability was assessed at 50%. On the basis of the opinion given by the Invaliding Medical Board, the respondents applied the provisions of Para 173 of Pension Regulations for the Army, Part-I, and found that the disability pension for the disability "Schizophrenia F-20" was rejected. The 1st appeal preferred against the said order was also rejected. Despite the fact that Second Appeal was not preferred in time, the belated Second Appeal was answered by the competent authority after the applicant had filed an Original Application before us in O.A.No.02 of 2013 in which a direction had been issued to the respondents to consider the Second Appeal preferred by the applicant, in accordance with law. The respondents have constituted a Review/Appeal Medical Board for ascertaining the attributability or aggravability and the present degree of disability to the applicant with its probable duration and accordingly, the Review Medical Board examined the applicant and gave its opinion. On the basis of the said

opinion, the Second Appeal was disposed of on 07.07.2014 rejecting the case of the applicant. The present application has been filed challenging the said order of rejection and for the grant of disability pension if reinstatement into service is not grantable. While submitting the arguments, the learned counsel for the applicant withdrew the claim for re-instatement, but insisted for the alternative prayer of disability pension. Therefore the present question is whether the applicant is entitled to disability pension as sought for or not. No doubt the applicant was affected by the disability, "Schizophrenia F-20" while he was in service. It is an admitted fact that the applicant was not having the disability, "Schizophrenia F-20" before entering the service. The Invaliding Medical Board which went on elaborately in considering the disability of the applicant had opined that the applicant had no family history of mental illness and he being the youngest of four siblings had elder sisters. Similarly it was recorded that no other relative had such disability of "Schizophrenia F-20". However, in the reason for the hospitalization it was referred to that the relapse of "Schizophrenia F-20" was caused due to poor medication administered to him in the earlier examinations. On the basis of the opinion by the Psychiatric Expert in the Invaliding Medical Board as well as in Appeal Medical Board, we can see that the disability, "Schizophrenia F-20" was set in on the applicant at Meerut during his service. Quoting the above stations,

the learned counsel for the applicant would submit in his argument even though the onset of the disease "Schizophrenia F-20" was in field area Tenga, the presumption can be drawn that the stress and strain caused in the peace station would also have the same effect for the onset of such a disability. He would draw our attention to the judgment of the Hon'ble Apex Court reported in **(2013) 7 SCC 316** in the case between **Dharamvir Singh** and **UOI & Ors.**, wherein the difference in the field area and the peace area has virtually been taken away towards the onset of any disability. The relevant passage from the said judgment would be as follows:

" 32. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of "Entitlement Rules for Casualty Pensionary Awards, 1982", the appellant is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant was suffering from "Generalised Seizure (Epilepsy)" at the time of

acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a causal connection with the service conditions. "

(Emphasis supplied by us)

10. Apart from that, Rules 5 and 9 of "Entitlement Rules for Casualty Pensionary Awards, 1982" would go to show that the presumption once drawn regarding the attributability or aggravability could be dispelled by the experts' opinion with reasons to be given in the Medical Board proceedings. When we perused the opinion of the Invaliding Medical Board as well as the opinion of the Appeal Medical Board, we could see that the presumption drawn towards attributability and aggravability

was neither rebutted nor shown as incorrect by giving cogent reasons. The reasons given in the Review Medical Board for the opinion of NANA that the onset in peace station and there was no close time association of field service within one year of onset of ID have been watered down by the aforesaid judgment of Hon'ble Apex Court. Similarly, other reasons given were extracted from Para 54 of Guidelines to Medical Officers, 2008 and they are applicable to facts of this case. The disability of the applicant is "Schizophrenia F-20" which was admittedly not found existing with the applicant prior to his service and was onset in peace station to which the medical experts cannot opine as not attributable to or aggravated by service merely because it is contracted in peace station. The said opinion/reason is against the dictum laid down by the Hon'ble Apex Court in **Dharamvir Singh's case**. Therefore, the presumption continues and has not been rebutted by proper explanation given either by Invaliding Medical Board or the Appeal Medical Board.

11. Similarly the Hon'ble Apex Court in a Civil Appeal No.5140 of 2011 in between **K.Srinivasa Reddy** and **UOI & Others**, filed against a judgment of this Tribunal made in T.A.No.100 of 2010, held as follows:

" Applying the above tests to the case at hand we find that no disease had been recorded or detected at the time of the appellant's acceptance for military service. The respondent has also failed to bring on record any document to suggest that the appellant was under treatment for any disabling disease hereditary or otherwise. In the absence of any such disabling disease having been noticed at the time of recruitment of the appellant, it was incumbent on the part of the Medical Board to call for the records to look into the same before coming to the conclusion that the disease subsequently detected could not have been detected on medical examination prior to the appellant's acceptance for military service. More importantly in para 29.2 of Dharamvir Singh's case (supra) it is stated on principle that a member is presumed to be in sound physical and mental condition at the time of entering service if there is no note or record to the contrary and in the event of his subsequently being discharged from service on medical grounds any deterioration in his health is presumed to be due to service. "

12. In the said judgment, the principle laid down by **Dharamvir Singh's** case has been followed with regard to the appreciability of medical opinion. It is also laid down that the medical opinion given by the experts could be respected and need not be worshipped. On the strength of the above said judgments, when we approach this case, the reason given by the Appeal Medical Board for arriving the opinion of

non-attributability or non-aggravability of the disease, "Schizophrenia F-20" , they are not in accordance with the principle laid down by the Hon'ble Apex Court in **Dharamvir Singh's** case and therefore, the opinion given by the Appeal Medical Board would not in any way rebut the presumption drawn in favour of the applicant that the disability "Schizophrenia F-20" is attributable to or aggravated by military service. Therefore, we are of the considered view that the opinion of the medical experts both in Invaliding Medical Board and in the Appeal Medical Board as to its attributability or aggravability are not sustainable. In view of the presumption with regard to attributability or aggravability has not been shown contrary or rebutted, the applicant's disability "Schizophrenia F-20" is deemed as attributable to or aggravated by military service. AS per the provisions of Para 173 of Pensions Regulations for the Army, 1961-Part-I, a personnel who was discharged on invalidation sustained a disability with 20% or more and the said disability is found attributable to or aggravated by military service, is entitled for disability pension. The facts of the applicant's case would fulfill the requirements of Para 173 of Pensions Regulations for the Army, 1961, Part-I, and the applicant is thus entitled to disability pension for the ID "Schizophrenia-F20".

13. As regards the grant of disability pension, we have seen that the applicant has been receiving service pension and therefore he is entitled to a disability element of disability pension, and is grantable. The Invaliding Medical Board had quantified the disability at 50% in the year 2007 whereas the Review/Appeal Medical Board had assessed the disability at 40% for life in the year 2013. Therefore, the latest quantification at 40% disability should be considered as existing on the applicant and he is entitled for the grant of disability element of disability pension on the said degree of disability. The applicant was discharged on 06.10.2007 and therefore the Pension Regulations for the Army 2008 Part-I is applicable to him and as per the rules made therein, the disability assessed by the Medical Board below 50% shall be rounded off to 50%. Therefore, we find that the applicant is also entitled for the disability element of pension at 50% after being rounded off. The said disability pension ought to have been awarded to the applicant from the date of his discharge since the present application is filed against the Second Appeal preferred against the refusal of the grant of disability pension sought for by the applicant. Accordingly, these points are decided in favour of the applicant, except reinstatement as the said relief is not pressed by the learned counsel for the applicant.

14. **Point No.3:** In view of our discussions held above, we find that the applicant is entitled for disability element of disability pension at 50% from the date of his invalidation and the relief of re-instatement is not grantable. Thus the application filed by the applicant is ordered in respect of the disability pension only as indicated above. Accordingly, the respondents are directed to issue Corrigendum to the PPO of the applicant for the grant of the disability element of pension at 50% for life from the date of his invalidation and to pay the arrears till this date within a period of three (3) months from today. In default of compliance, the arrears will carry an interest at 9% per annum till it is paid.

15. In fine, the application is ordered with the above said directions as indicated above. Application is dismissed with regard to the relief of re-instatement. However, there will be no order as to costs.

LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

09.03.2015

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

Internet : Yes/No
Internet : Yes/No

VS

To:

1. The Secretary to
Government of India
Ministry of Defence, New Delhi-110 011.
2. Chief of Army Staff
Army Head Quarters (AHQ)
Defence Head Quarters (DHQ)
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24, Infantry Division, Signal Regiment
C/o 56 APO.
10. M/s. M.Selvaraj and V.Soundar
Counsel for applicant.
11. Mr. V.Kadhirvelu, CGSC
For respondents.
12. OIC, Legal Cell,
ATNK & K Area, Chennai.
13. Library, AFT, Chennai.

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

O.A.No.109 of 2014

Dt: 09.03.2015