

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No.124 of 2014

Thursday, the 12th day of March 2015

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

AND

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

Ex 14467480L Ex Gnr (DMT)
M. Nagarajan, aged 51 years,
S/o Shri Muniappan
Record Office: Artillery Records
Village Reddiyur, Post Appugkal
Via Anakut, District Vellore(TN),Pin-632101.

...Applicant

Applicant in person

vs.

1. The Union of India
Through the Secretary
The Government of India
Ministry of Defence (Army)
New Delhi-110 011.

2. The Chief of the Army Staff
Army HQ, South Block
DHQ Post, New Delhi-110 011.

3. The President Medical Board
Military Hospital, Chennai-16.

4. The Officer-in-Charge Records
Artillery Records, APS, Pin-908802,C/o 56 APO.

5. The Principal Controller of the Defence
Accounts (Pension)
Draupathi Ghat, Allahabad (UP)
Pin-211014.

... Respondents/Respondents

By Mr. S. Haja Mohideen Gisthi, SCGPC

ORDER

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

1. This application is filed by the applicant seeking to consider his disability "Neurosis" as attributable to and aggravated by military service, to set aside the Review Medical Board Proceedings and to grant disability pension at 30% as per Guide to Medical Officers (Military Pension) 2002, and to direct the respondents round off the disability of 30% into 50% disability as per the existing order on the subject.

2. The case of the applicant in brief would be as follows: The applicant was enrolled in the Army on 27.06.1980. He was serving in Artillery Centre, Hyderabad and during Battle Physical Efficiency Test, he fell down while doing Ghoda Jump. He sustained injury in the neck and his disability was diagnosed as "*Sasmodictrori Collis*". His pain further aggravated due to stress and strain of military service. During the period from 23.07.1984 to 06.08.1984, he was treated at Military Hospital, Dhrangadhra and the said disability was renamed as "*Fibrositis Neck*". The applicant submits that since he had stiffness in his neck, he was unable to move his neck freely and he could not drive vehicle. Therefore, he was sent to MH, Kirkee along with 1xJCO and an escort party where he was admitted from 07.08.1984 to

26.02.1985 and thereafter he was discharged from service on 25.02.1985 on medical grounds and at that time, his ID was renamed as "*Neurosis*". His claim of disability pension was rejected by PCDA (P), Allahabad by letter dated 09.07.1985 stating that his disability was neither attributable to nor aggravated by military service. His appeal against the rejection was turned down by the Government of India, Ministry of Defence by its letter dated 10.04.1986. The applicant approached this Tribunal with the Original Application No.15 of 2012, but by an order dated 16.02.2012, this Tribunal dismissed the same before admission with a liberty to challenge the opinion of the Medical Board AFMSF-16 before the Review Medical Board to be constituted by the respondents within a period of two months and directed the Medical Board to consider the onset of the disease and also the Entitlement Rules provided under Annexure-III to Appendix-II to the Pension Regulations for the Army 1961, Part-I. The Review Medical Board at MH Chennai opined that the disability of the applicant is 40% for life, but since it was considered neither attributable to nor aggravated by service, it was recorded as "Nil" for life for purposes of pension. He was advised to approach a Court of law for sanction of pension. Subsequent Original Application No.13 of 2013 was filed before this Tribunal which was dismissed as withdrawn with liberty to file a fresh O.A. on or before 30.06.2013. The applicant further

submits that as per Entitlement Rules for Casualty Pensionary Awards, 1982 of Appendix-II (Regulations 173), a member is to be presumed in sound physical and mental condition upon entering the service, if there was no note or record made at the time of entering into service, if he is discharged from service on medical grounds, any deterioration in his health would be presumed as due to the service. The Invaliding Medical Board and the Review Medical Board did not follow the Rules and Regulations while giving their opinion and therefore, the applicant submits that his disability "*Neurosis*" was only due to the attributability and aggravability of military service. The applicant also submits that as per Guide to Medical Officers (Military Pension) 2002 and Entitlement Rules 1984, the disease "*Psychosis and Psychoneurosis*" have been declared as the disease affected by stress and strain and the "*Psychosis*" is considered as "*Neurosis*". Therefore, the applicant requests this Tribunal to set aside the opinion of the Invaliding and Review Medical Boards and consider his neck injury sustained during BPET which was simultaneously aggravated due to stress and strain of military service and the disability percentage at 30% as per Guide to Medical Officers (Military Pensions) 2002 be considered as already recommended in his Invaliding Medical Board and grant of disability pension with 50% disability on the subject.

3. The respondents filed a reply-statement which would be as follows: The applicant was enrolled in the Regiment of Artillery on 27.06.1980. After the basic and advance military training, the applicant was posted to 17 Med Regt on 16.09.1981. Since the applicant felt pain on the left side of his neck, he was admitted in Military Hospital, Dhrangadhra on 23.07.1984 and was treated for the ID "*Fibrositis Neck V-67*". After check-up, the doctor at MH, Dharangdhara opined that the applicant was having pain over cervical region since three years, i.e., from his training period and was treated in MH Secunderabad, that there was no radiation of pain, that while doing strenuous exercise, he was getting pain over foot, that he had no confidence in driving a vehicle. The doctor further added about the applicant's personal problems were such that his brother ran away from home and that his wife left him and was staying with somebody else without divorce and his consent and that kept him worrying and bothering all the time. Since there was no improvement despite medical treatment, the doctor recommended psychiatric treatment and accordingly, the applicant was transferred to Military Hospital, Kirkee on 28th July 1984 where his ID was diagnosed as "*Neurosis*". He was downgraded to Med Cat EEE, however his disability was regarded as neither attributable to nor aggravated by military service. The opinion of the Classified Specialist (Psychiatric) is to the effect that the

applicant's case is of "*Neurosis*" manifesting as vague somatic temptations like pain and stiffness in the neck, sweating in palm and sleep disturbance, that he complained of forgetfulness and was afraid of driving vehicles and these problems have been precipitated by uncongenial domestic situation and conscious dislike for service. He was considered unfit for further service and therefore recommended med cat EEE (Psychological), Diablement-30% and the ID was not attributable to nor aggravated by service. Eventually, the applicant was invalidated out for the ID "Neurosis 300" with effect from 19th April 1985 (AN). Prior to invalidation, he was brought before the Invaliding Medical Board at Military Hospital, Kirkee on 04th February 1985 wherein it was opined that the applicant's ID was neither attributable to nor aggravated by military service the ID being constitutional and unconnected with service factors and the degree of disablement was assessed at 30% for two years. The applicant's claim for disability pension was also rejected by PCDA (P) Allahabad vide letter dated 09th July 1985 and the same was communicated to the applicant vide letter dated 25th July 1985 with an advice to prefer an appeal against rejection of disability pension to Government of India, Ministry of Defence (Pen-A) within six months from 09th July 1985, if he desired. The respondents submit that the applicant's appeal dated 05th August 1985 was considered by the Government of India, Ministry of Defence

and was rejected vide letter dated 10th April 1986 stating that no reasonable grounds were found to alter the decision already conveyed by the PCDA (P) Allahabad. The rejection of the appeal was communicated to the applicant vide letter dated 31st December 1988. The Original Application No.15 of 2012 filed before this Tribunal was dismissed with a liberty to the applicant to challenge the opinion of the Medical Board (AFMSF-16) before the Review Medical Board to be constituted by the respondents within a period of two months from the date of filing an application by the applicant. Accordingly, Review Medical Board was carried out at Military Hospital, Chennai on 11th July 2012 which opined that the ID was not attributable to nor aggravated by service conditions and assessed his disability at "Nil %" for life. It was communicated to the applicant by letter dated 01st August 2012. The applicant's another O.A.No.13 of 2013 was also dismissed by this Tribunal on 12th April 2013 with liberty to file OA on or before 03rd June 2013. The applicant is therefore not entitled to disability pension as per Para 173 of Pension Regulations for the Army 1961, Part-I. In the above facts and circumstances, the respondents request that this application may be dismissed.

4. The allegations made in the rejoinder would be as follows: The applicant has reiterated the facts in respect of his ID "Fibrositis Neck" and the treatment taken for the said disease and also the ID

"Neurosis" and other particulars regarding the treatment taken by him for the said IDs. He has also referred to an order passed by this Tribunal in O.A.No.73 of 2014 dated 05.11.2014 in which the opinion of the Medical Board and the opinion of non-attributability and non-aggravability were reversed. The applicant compared his case with the said case and sought for the relief of disability pension at 40% rounding off to 50%.

5. On the above pleadings, the following points were framed for consideration in this application:

(1) Whether the opinion of Invaliding Medical Board held on 19.04.1985 and the Review Medical Board held on 11.07.2012 as to non-attributability and non-aggravability of the ID "Neurosis" are liable to be set aside?

(2) Whether the applicant is entitled for the disability pension for the ID "Neurosis" at 40% with rounding off to 50% as per the Government of India letter dated 31.01.2001?

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

6. We heard the applicant in person and Mr. S.Haja Mohideen Gisthi, learned SCGPC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for respondents.

7. We have given our anxious thoughts to the submissions made on either side.

8. **Point Nos.1 and 2:** The applicant was enrolled in the Army on 27.06.1980 and was given training as a recruit and during his service, he sustained neck pain and was treated for the neck pain and subsequently it was detected as "Neurosis" and was given treatment for the said disease. The applicant was placed under low medial category and finally an Invaliding Medical Board was constituted and the applicant was invalided out from service on 19.04.1985. The Invaliding Medical Board opined that the ID "Neurosis" was neither attributable to nor aggravated by military service and it was a constitutional one. However, the disability was quantified at 30% for a duration of two years. The claim for the disability pension of the applicant was rejected by the PCDA on the foot of the opinion given by the Invaliding Medical Board as to consider non-attributability and non-aggravability, on 09.07.1985 which was communicated by the Records on 25.07.1985. An appeal was preferred against the said rejection order by the applicant on 05.08.1985 which was rejected on 10.04.1986. The said rejection order was communicated to the applicant on 31.12.1988, upon a query letter of the applicant dated 23.12.2008. The applicant subsequently sent a legal notice claiming the disability pension on 12.09.2011 which was negatively replied by

the respondents on 23.01.2012. Aggrieved by the said denial for disability pension, the applicant filed O.A.No.15 of 2012 before this Tribunal in which the applicant was given an opportunity to challenge the opinion of the Invaliding Medical Board by seeking a constitution of Review Medical Board. As per the said order, the applicant sought for constitution of Review Medical Board and it was constituted by the respondents and the applicant was examined and the Review Medical Board has given its opinion on 11.07.2012 confirming the opinion of the Invaliding Medical Board as to non-attributability and non-aggravability and the disability was assessed at 40% for life. Further, the Review Medical Board has opined that the applicant was not eligible for disability pension for life as the ID "Neurosis" was not attributable to nor aggravated by military service and was constitutional. The present application is filed against the RMB dated 11.07.2012 along with an application to condone the delay of 272 days in filing the Original Application.

9. On the above admitted facts when we approach the case, this Tribunal had found in O.A.No.15 of 2012 that the opinion of Invaliding Medical Board cannot be set aside by the Tribunal and relief of granting disability pension is not possible against the opinion of IMB in view of the judgment of the Hon'ble Apex Court made in the case between **A.V.Damodaran** and **UOI** reported in **(2009) 9 SCC 140**.

The learned CGSC would submit in his argument that the judgment of this Tribunal passed in O.A.No.15 of 2012 would bind both the parties and the Review Medical Board has also given the same opinion as to attributability and aggravability of ID "Neurosis" and therefore, the application be dismissed on the sole ground. However, the applicant in his rejoinder would point out that this Tribunal had passed an order in O.A.No.73 of 2014 dated 05.11.2014 setting aside the Medical Board's opinion by following the principles laid down in **Dharamvir Singh vs. UOI** reported in **(2013) 7 SCC 316** by the Hon'ble Apex Court.

10. It is a fact that this Tribunal had quashed the opinion of Medical Board as to attributability or aggravability if it was not in conformity with the principles laid down by the Hon'ble Apex Court made in **Dharamvir singh's** case where the guidelines referred in the said judgment were not followed by Medical Boards. Similarly, the judgment of Hon'ble Apex Court reported in between **Sukvinder Singh** and **UOI (Civil Appeal No.5605 of 2010, dated 25.06.2014)** followed by a case between **Srinivasa Reddy** and **UOI (Civil Appeal No.5140 of 2011)** have laid down certain principles that the opinions of the Medical Boards have to be respected but not to be worshipped by the Tribunals. The judgment of this Tribunal in O.A.No.15 of 2012 was passed before the judgments of the Hon'ble

Apex Court were pronounced in the cases of **Dharamvir Singh** and **Srinivasa Reddy**. Therefore, the said judgment can be explained in the light of the principles laid down by the Hon'ble Apex Court reported in **Dharamvir Singh** and **Srinivasa Reddy** case.

11. When we peruse the facts of the present case in the light of the aforesaid judgments, we find that the applicant sustained the disability, "Neurosis" only during the period of service. Admittedly, he was not having the said disability before the date of his enrolment. The applicant was having neck pain during BPET in training and was treated for the said ailment. Subsequently, it was diagnosed as "Fibrositis Neck" and he was transferred for treatment to MH, Kirkee. He was given treatment for the said disease and was finally found affected by "Neurosis" and after treatment he was discharged with the recommendation of initiating invalidation proceedings. Thus the Invaliding Medical Board was constituted on 04.02.1985 for the IDs "Sasmodictrori Collis" and "Neurosis 300" and the applicant was examined by the Invaliding Medical Board. In the Medical Board proceedings we find that the said disability of "Sasmodictrori Collis" occurred on 30.12.1981 at Dhrangadhra station and it was treated for only 13 days. The disability "Neurosis 300" was found to have set in during August 1982 at Dhrangadhra and on that reason, he was invalided out on the opinion of the Invaliding Medical Board. The

Invaliding Medical Board opined that the disability being constitutional and unconnected with the service factors was not attributable to nor aggravated by military service. There was no other endorsement made by the Invaliding Medical Board for arriving at the said opinion. However, in the summary of the case we find that there was no family history of mental illness in the family of the applicant. In the Psychiatric Specialist's opinion, it is found that the applicant was having sleep disturbance in the neck, afraid of driving vehicles and suffered forgetfulness which were precipitated by uncongenial domestic situation and these conditions also caused his dislike for service. We understand that the said situation has been found much after he entered in the service of Army. Since there was no family history of mental illness in the applicant's family and the earlier complaint of neck pain and other symptoms have been referred to as the causes for the disability along with domestic problems, the entire reason leading to the said disease cannot be attributed to the domestic situation or constitutional reasons alone. When there is no family history of mental illness, the opinion that the ID was constitutional cannot be sustained. As pointed out by Hon'ble Apex Court, there was no reference in the opinion as to why the ID could not be detected at the time of entry. As per the judgment of the Hon'ble Apex court made in **Sukhvinder Singh vs. Union of India & Others** in Civil

Appeal No.5605 of 2010, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. Accordingly, presumption could be drawn since the disability "Neurosis" was not suffered by the applicant before his enrolment of service. Now the contrary should be proved by the respondents. But nothing had been explained as required towards the explanation of constitutional nature of the disability "Neurosis".

12. Apart from that, Rules 5 and 9 of "Entitlement Rules for Casualty Pensionary Awards, 1982" would also 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 peruse the opinion of the Invaliding Medical Board as well as the opinion of the Appeal Medical Board, we see that the presumption drawn towards attributability and aggravability was neither rebutted nor shown as incorrect by giving cogent reasons. The domestic situation was referred to as one among the reasons and it was not shown as the sole reason.

13. Therefore, the opinion given by the Invaliding Medical Board as well as the Review/Appeal Medical Board as to non-attributability and non-aggravability service in the case of the applicant are found against

the guidelines laid down in **Dharamvir Singh** and **Sukvinder Singh** cases.

14. Therefore, the presumption drawn in favour of the applicant as to attributability and aggravability continues since it has not been rebutted by proper explanation given either by Review/Appeal Medical Board.

15. Similarly the Hon'ble Apex Court in a Civil Appeal No.5140 of 2011 in between **K.Srinivasa Reddy** and **UOI & Ors.**, 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. "

16. 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, "Neurosis" , they are not in accordance with the principle laid down by the Hon'ble Apex Court in **Dharamvir Singh's** case. Thus, 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 "Neurosis"" 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 were not rebutted or shown to the contrary, the applicant's disability "Neurosis"

is found 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 fulfil such requirements of para 173 of Pension Regulations for the Army, 1961, Part-I, and the applicant is thus entitled to disability pension for the ID "Neurosis".

17. As regards the grant of disability pension, the applicant is found entitled to 40% of disability as per the opinion given by Review/Appeal Medical Board for life. Since we found that the applicant is entitled for the grant of disability pension, the duration opined by the Review Medical Board "Nil" for life should be for life. The applicant claimed that the said quantum of disability at 40% shall be broadbanded to 50% in view of the Government's policy letter dated 31.01.2001. The applicant was boarded out from service prior to 01.01.1996, the applicability of the benefits given under the said letter to the pre-01.01.1996 retirees were settled in the judgment of Hon'ble Apex Court made in **K.J.S. Buttar vs. UOI & another** reported in **(2011) 11 SCC 429**. Therefore, we find that the applicant being a pre-01.01.1996 retiree is entitled to the disability of 40% be rounded off to

50%. Accordingly, both the points are decided in favour of the applicant.

18. **Point No.3:** In the discussions held above, we find that the applicant is entitled for disability pension at 50% and the refusal to grant disability pension on the opinion of IMB and Review Medical Board that it was not attributable to nor aggravated by military service were found incorrect. However, the applicant had approached this Tribunal by filing O.A.No.15 of 2012 on 25.01.2012 and thereafter, he was given liberty to apply for Review Medical Board and after its opinion he has filed O.A.No.13 of 2013 on 10.12.2013 which was dismissed as withdrawn on 12.04.2013 with liberty to file fresh application and thereafter, this application has been filed seeking for disability pension. In the said circumstances, the applicant cannot be granted with disability pension from the date of invalidation since the earlier claim was barred by law of limitation. In the judgment of Hon'ble Apex Court made in **Tarsem Singh's** case it has been laid down that the claim for pension is a recurring and continuous cause of action and it would keep alive a claim of pension for three years prior to the date of such claim. When we apply the principles laid down in the said judgment, we find that the applicant can be granted with disability pension at 50% with effect from three (3) years prior to the date of filing of O.A.No.15 of 2012. The respondents are therefore

directed to issue PPO for the grant of disability pension at 50% from 25.01.2009 and to pay the arrears payable from the said date till this date within a period of three (3) months. In default, the respondents shall pay the said arrears with interest at 9% per annum from this date till the date of payment.

19. With the above said directions and observations, the application is allowed. No order as to costs.

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

Sd/
JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)

12.03.2015
(True copy)

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

Internet : Yes/No
Internet : Yes/No

To:

1. The Secretary
Ministry of Defence (Army)
New Delhi-110 011.
2. The Chief of the Army Staff
Army HQ, South Block
DHQ Post, New Delhi-110 011.
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M. Nagarajan, S/o Shri Muniappan
Village Reddiyur, Post Appugkal
Via Anakut, District Vellore(TN),Pin-632101.
Party in person.
7. Mr. Haja Mohideen Gisthi, SCGSC
For respondents.
8. OIC, Legal Cell, ATNK & K. Area, Chennai.
9. Library, AFT, Chennai.

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

O.A. 124 of 2014

Dt: 12.03.2015