

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI
(Circuit Bench, Hyderabad)**

O.A. No. 186 of 2017

Thursday, the 20th day of September, 2018

**THE HONOURABLE MR.JUSTICE V.S.RAVI
(MEMBER - J)
AND**

**THE HONOURABLE LT GEN C.A.KRISHNAN
(MEMBER - A)**

Ex-2604962-L Rect Boddu Venkateswara Reddy
S/o B.Thirupathy Reddy, aged 38 years,
The Records Madras Regimental Centre
Village H.S.Kottala, Post-Kanala, Mandal Nandyal,
Dist-Karnool, State-Andhra Pradesh, PIN-518593
**By Legal Practitioner:
Shri M.Selvaraj**

...Applicant

vs.

1. Union of India,
Represented by its Secretary
Ministry of Defence
South Block, New Delhi-110 011
2. The Chief of the Army Staff, Army HQ
DHQPO, New Delhi-110011
3. The Principal Controller of Defence Accounts
Office of PCDA (Pensions), Allahabad
Uttar Pradesh, PIN 211014
4. The Officer-in-Charge,
Records, The Madras Regiment, Post Bag No.1
Wellington (Nilgris)-643231

...Respondents

**By: Shri Namavarappu Rajeswara Rao
Central Government Counsel for Respondents**

ORDER

1. This is an O.A filed by the applicant under the provisions of the Section 14 of the AFT Act, 2007 claiming disability pension with broadbanding benefit or to direct the respondents to conduct Resurvey Medical Board.

2. The applicant and also the learned Counsel for the applicant have submitted that the applicant has been enrolled in the Indian Army on 20.09.1999 and the applicant has been medically fit before enrolment, and he has undergone the basic training at Madras Regiment. During the Advanced Training, the applicant suffered "BILATERAL COMPOUND MYOPIC ASTIGMATISM". The Medical Board has clearly opined that the disability has been aggravated due to military service and the applicant has been invalided out of service on 11.07.2000. According to the applicant, the applicant is entitled for disability pension since the disease arose while in service and aggravated due to military service, as per the opinion given by the Medical Board. However, the respondents have not granted disability pension with broadbanding benefits to the applicant. Hence the applicant has filed the present O.A.

3. The respondents in their reply and also the learned Central Government standing Counsel also have submitted that the applicant has been enrolled in the Indian Army on 20.09.1999 and he has been invalided out of the Army on 12.07.2000(AN) under Medical Category EEE due to “BILATERAL COMPOUND MYOPIC ASTIGMATISM”, while undergoing training. The duly constituted Invaliding Medical Board has assessed the applicant’s disability at 20% for one year and recorded as aggravated by military service. The respondents submitted that the disease of the applicant exists, even before the applicant’s entry into service. Hence, the respondents have prayed the Tribunal to dismiss the O.A.

4. In the Medical Board opinion enclosed with the reply of the respondents, at page-15, it has been pointed out that the disability “BILATERAL COMPOUND MYOPIC ASTIGMATISM” of the applicant has been aggravated by military service and the effect of such aggravation still persists and the said disability is progressive and the percentage of disablement has been assessed at 20% for one year as per the details pointed in the page-16 of the Medical Board opinion. Further, in the preliminary medical examination report

enclosed at page-22 of the reply statement of the respondents, it has been observed that the applicant has been found to be fit in category 'A'(AYE) as per the Recruiting Medical Officer, BRO, Secunderabad.

5. Since the respondents themselves have admitted in the reply statement that the duly constituted Invaliding Medical Board has assessed the disability of the applicant at 20% for one year and also recorded as aggravated by military service, it is seen that the applicant's present medical condition has to be assessed for passing appropriate Order in accordance with law in this matter.

6. The Hon'ble Supreme Court in the judgement dated 02.07.2013 in the case of Dharamvir Singh vs Union of India and Ors (Civil Appeal No.4949 of 2013 arising out of SLP (C) No.6940 of 2010) has observed 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 to 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)]

(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. "

29. xxxxx

30. *In the present case it is undisputed that no note of any disease has been recorded at the time of appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In absence of any note in service record at the time of acceptance of joining of appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service....."*

7. Now it is not possible for us to assess the present medical condition of the applicant, since no medical review has been done nor the applicant has asked for the same all these years. Therefore, it has become necessary for us to ascertain the present medical condition of the applicant for the said disease "BILATERAL COMPOUND MYOPIC ASTIGMATISM", the degree of disability, if any,

and its probable condition before we adjudicate the matter further. Therefore, we are of the considered view that the applicant be referred to a Resurvey/Review Medical Board to assess the present medical condition of the applicant for the disability pension.

8. In view of the foregoing, the respondents are hereby directed to constitute or convene a Re-Assessment Medical Board at the designated Military Hospital for the examination of the applicant towards the "BILATERAL COMPOUND MYOPIC ASTIGMATISM" within two months from the date of this order and to inform the applicant the date and venue for his presence and to submit the report of the said Medical Board proceedings within one month thereafter. In the best interest of justice, equity and fair play, the respondents are instructed to bear the expenses and other incidental charges towards transport and accommodation of the applicant in connection with the Re-Assessment Medical Board.

9. The Medical Board will give its opinion only on the present medical condition of the applicant for his disability of "BILATERAL COMPOUND MYOPIC ASTIGMATISM" and assess the degree of disability and the probable duration of the degree of disablement.

The respondents are directed to place the said Re-Assessment/Review Medical Board proceedings before this Tribunal within the time prescribed in this order.

10. Call the matter on 21.12.2018.

Sd/-.....
LT GEN C.A.KRISHNAN
MEMBER (A)

Sd/.....
JUSTICE V.S.RAVI
MEMBER (J)

20.09.2018
(True Copy)

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To

1. Shri.M.Selvaraj, Counsel for Applicant
2. Shri Namavarappu Rajeswar Rao, Central Government Counsel for Respondents
3. OIC, Legal Cell (Army), Telangana & Andhra Sub Area, Secunderabad, A.P.
4. Registrar, Military Hospital, Secunderabad, A.P.

**HON'BLE MR. JUSTICE V.S.RAVI
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AND
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