

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A No. 24 OF 2010

THURSDAY, THE 4TH DAY OF APRIL, 2013/14TH CHAITHRA, 1935

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)

HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

MR. VASUDEVAN NAIR..P.K, AGED 69 YEARS,
EX-HAV (CLERK GD), NO.6299343,
ARMY-CORPS OF SIGNALS) MINI VIHAR,
MANJINIKARA, OMALLOOR P.O, PATHANAMTHITTA,
KERALA – PIN – 689 647.

BY ADV. SRI. P.A.ABDUL JABBAR

versus

RESPONDENTS:

1. THE OFFICER IN CHARGE, SIGNALS RECORDS,
JABALPUR, PIN – 901 124.
2. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS
(PENSIONS), PENSION SANCTIONING AUTHORITY,
P C D A (P) ALLAHABAD.
3. UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
MINISTRY OF DEFENCE CENTRAL SECRETARIAT,
NEW DELHI.

BY CENTRAL GOVERNMENT COUNSEL SRI.TOJAN J.VATHIKULAM

O R D E R

Shrikant Tripathi, Member (J):

1. Heard Mr. P.A.Abdul Jabbar for the applicant and Mr. Tojan J Vathikulam for the respondents and perused the record.

2. The applicant Ex Havildar (Clerk GD) No.6299343 has filed the instant Original Application for disability pension with effect from the date of his discharge.

3. The facts are almost admitted. The applicant was enrolled in the Indian Army on 28th October 1963 and was invalided out of service on 22nd July 1983 on completion of 19 years 268 days service. It is not in dispute that the applicant has already been granted service pension and is in receipt thereof since the date of discharge. The Medical Board opined that the applicant was suffering from the disability "Myocardial Infraction 410 (V-67) 40% for two years. The Board further opined that the disability had aggravated due to the stress and strain of the military

service, as he had been posted in a high altitude area. The applicant's claim for disability pension was rejected by the PCDA (P), Allahabad vide its letter dated 11th April, 1984 on the ground that the service conditions of the applicant had not resulted in causing the disability as he had the disability from before entering into the service. The first appeal filed by the applicant was rejected vide the letter dated 8th June 1987, but he did not file any second appeal and kept silence after the rejection of the first appeal. He filed the instant Original Application in the year 2010. Learned counsel for the applicant however informed that the applicant had been indulging in making representations after rejection of the first appeal, so the delay occurred.

4. Learned counsel for the applicant submitted that the opinion of the Medical Board was conclusive and binding therefore the PCDA (P), Allahabad had no power to over-rule the opinion. He next submitted that the conditions of service of the applicant had contributed the disability, therefore, the conclusion of the Medical Board that the

disability had occurred due to the conditions of the military service was perfectly correct.

5. Mr.Tojan appearing for the respondents, on the other hand, submitted that the claim for the disability pension for two years period from the date of discharge has become barred by limitation. Even according to the verdict of the Apex Court in the matter of **Union of India and Ors. vs. Tarsem Singh (2008) 8 SCC 648**, the relief for the aforesaid period of two years as claimed by the applicant could not be granted.

6. The learned counsel for the applicant submitted that the applicant intends to file second appeal along with an explanation for the delay, therefore, a direction may be issued to the second appellate authority to consider the appeal and pass appropriate order. He further submitted that a direction be also issued to constitute a Re-assessment Medical Board with regard to continuance of the disability after expiry of the aforesaid period of two years determined by the Medical Board.

7. In view of the fact that the appellant intends to prefer second appeal which is one of the available alternative Forum, we do not consider it appropriate to enter into the merits of the claim with regard to the disability pension even for the initial period of two years. The other claim for constitution of the Re-assessment Medical Board also seems to be just and expedient.

8. In view of the aforesaid, the Original Application is disposed of with the direction to the applicant to prefer a time barred second appeal within one month from today along with explanation for the delay. In case any such appeal is filed within the aforesaid period, the second appellate authority to consider the same and pass appropriate order thereon in accordance with law within four months from today.

9. The respondents are further directed to constitute Re-assessment Medical Board to assess the continuance of the disability after the expiry of the initial period of two years disability. In case the disability is found subsisting

even after the expiry of the aforesaid period of two year and is attributable to or aggravated by the service, the applicant's claim for the disability pension for the period beyond the aforesaid two years be also given due consideration in accordance with law.

10. There will be no order as to costs.

11. Issue copy of the order to both side.

Sd/-
LT.GEN.THOMAS MATHEW
MEMBER (A)

Sd/-
JUSTICE SHRIKANT TRIPATHI
MEMBER (J)

(true copy)

Prl.Pvt.Secretary