

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

T.A.No.48 of 2010

(W.P.C.No.28373/2006 OF THE HIGH COURT OF KERALA AT ERNAKULAM)

FRIDAY, THE 16TH DAY OF DECEMBER, 2011/25TH AGRAHAYANA, 1933

CORAM:

HON'BLE MR. JUSTICE A.C.ARUMUGHAPERUMAL ADITYAN, MEMBER (J)
HON'BLE LT. GEN. THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

LUKOSE V.T., AGED 51 YEARS,
S/O.MATHAI THOMAS, MANNIKAROTTU
PUTHEN VEEDU,
KAITHAPARAMBU, CHELIKUZHY P.O.,
PATTAZHI, KOLLAM DISTRICT.

APPLICANT/PETITIONER

BY ADV. SRI.MOHAN JACOB GEORGE.

VERSUS

1. UNION OF INDIA, REP. BY ITS SECRETARY,
MINISTRY OF DEFENCE, NEW DELHI.
2. DIRECTOR GENERAL OF ARMED FORCES
MEDICAL SERVICES, GOVT. OF INDIA
L-BLOCK, NEW DELHI - 110 001.
3. CHIEF CONTROLLER OF DEFENCE ACCOUNT
(PENSION), ALLAHABAD, U.P.
4. THE OFFICER IN CHARGE OF RECORDS OFFICE,
MECHANISED INFANTRY REGIMENT,
AHAMEDNAGAR - 414 110.

RESPONDENTS/RESPONDENTS

BY ADV. SMT. MOLY.E.V., CENTRAL GOVT. COUNSEL

ORDER

A.C.A. Adityan, Member (J)

The applicant has approached the Hon'ble High Court of Kerala at Ernakulam for grant of disability pension by way of filing W.P.(C) No.28373/2006 and after constitution of this Tribunal the same was transferred

as per Sec.34 of the Armed Forces Tribunal Act, 2007 and assigned number T.A.48/2010.

2. The short facts relevant for the purpose of deciding the case, sans irrelevant particulars, are that the applicant was recruited as a Sepoy in the Indian Army on 31/3/1975 and he was invalidated out of military service on 31/10/1983 on medical grounds. On the date of discharge the applicant had a service of 8 years and 7 months. At the time of discharge the Medical Board had assessed the disability of the applicant as 20%. At the time of enrollment, the applicant was found physically and mentally fit. In the summary of opinion it was observed that the applicant had an affair with a professional girl in an out of bound area, where he was nabbed by military police and subsequently he was awarded 14 days R.I. After the said incident he was talking irrelevantly and refused to take food. The applicant had moved the Hon'ble High Court of Kerala by way of filing O.P.No.18178/2000 challenging the order of the 1st respondent refusing the grant of disability pension. The said O.P. was disposed of with a direction to pass appropriate orders within 6 months. Pursuant to Ext.P6 judgment (in O.P.No.18178/2000) the petitioner was directed to report before the Command Hospital, Pune for fresh examination by the Medical Board, wherein the applicant was examined by various Psychiatrists and his case was reviewed by Col.(Dr.) D.Saldhana,

Professor and Head of the Department of the Armed Forces Medical College, Pune. The opinion of the Professor of Psychiatrist although confidential in nature, a copy was handed over to the petitioner by one of the senior staff of the Psychiatry Ward (Copy is Ext.P9). Pursuant to the medical review, the disability was assessed at 20%. The copy of the communication No.14522045/178/RSMB/DP dated 21/2/2006 evidencing the assessment of the degree of disablement at 20% for life from the Senior Records Officer of OIC Records is produced as Ext.P10. In Ext.P9 it was also noted that the disease (neurosis) had its origin in the exercise area (forward area of the army where war practices are held periodically) in Rajasthan sector. From Ext.P9 it can be inferred that the ailment of neurosis is attributable to/aggravated by military service. But without considering the opinion of the experts in Ext.P9 the competent authorities have rejected the claim of the petitioner for disability pension. As per Regulation 173 of the Disability Pension Rules For Army, 1961 part 1 the applicant is entitled for the grant of disability pension. So, challenging the order in Ext.P11 negating the claim of the applicant for disability pension, the applicant has come forward with this application for grant of disability pension from the date of his discharge.

3. The respondents 2 to 4 filed joint counter. First respondent

adopts the counter of R2 to R4. In the counter, the respondents would admit that the petitioner was enrolled in the Army on 31/3/1975 and was invalided out of service due to invalidating disability "NEUROSIS-300" with effect from 31/10/1983 under Army Rule 13(3)III(iii). The applicant was invalided out of service in medical category 'EEE(PSY) as per Ext.P4. As per the opinion of the Release Medical Board which held on 29/9/1983 at Command Hospital (SC) Pune the percentage of disability was medically assessed as 20% for two years. But as per the opinion of the Medical Board the disability was neither attributable to, nor aggravated by military service and also not connected with military service. Ext.P4 is the copy of AFMSF-16 dated 29 September 1983. On the basis of the opinion of the Medical Board the claim of the petitioner for disability pension was rejected by the 3rd respondent vide letter dated 4/12/1984. In the appeal preferred by the applicant before the competent authority as against the decision of the 3rd respondent dated 4/12/1984, which was preferred after a long delay of 13 years, no action was taken and it was intimated to the petitioner vide letter dated 6/3/1998. So the applicant approached the High Court by way of filing O.P.No.32176/1999 wherein the High Court has directed the respondents to consider the appeal submitted by the petitioner and issue a speaking order thereon by fixing 3 months time limit. Based on the judgment in O.P.No.32176/1999 petitioner's appeal was

considered and re-examined in detail at the office of the 1st respondent and was found that invalidating disability on account of which the petitioner was invalidated out of service is a constitutional disorder and is not attributable to nor aggravated by service. On that score the claim of the applicant for grant of disability pension was rejected by the 1st respondent vide order dated 20/4/2000 (Ext.R4(a)). Not satisfied with the order in Ext.R4(a) the petitioner again approached the High Court by way of filing O.P.No.18178/2000 for disability pension. A detailed counter was filed on behalf of the respondents therein (Ext.P5). The said O.P.No.18178/2000 was disposed of by the High Court vide Ext.P6 judgment dated 12/2/2004 with a direction to the respondent to examine the matter afresh and to pass appropriate order in the event of the petitioner moving the 2nd respondent apprising that he did not have any family history for the said disease by producing supporting documents. Accordingly the petitioner was called for fresh Medical Board examination as per Ext.P8. A fresh Medical Board was held at Command Hospital, Pune on receipt of sanction from DGAFMS, New Delhi and relevant medical documents were forwarded to the Command Hospital as per letter dated 9/9/2005. As per the Medical Board proceedings dated 11/11/2005 received from Command Hospital, Pune, his degree of disability "NEUROSIS-300" was assessed as 20% for life with an opinion that the disease was neither attributable to nor aggravated by

military service. Based on the opinion of the fresh Medical Board the claim of the applicant for disability pension was once again rejected vide Ext.P11 order dated 15/4/2006 by the competent authority. Thereafter, the petitioner was given adequate medical treatment for his disability at Military Hospital, Secunderabad and Command Hospital, Pune from 16th April 1983 to 3rd October 1983. As per Rule 27(C) of the Entitlement Rules for Casualty Pension Awards, 1982 Medical Board shall give findings and recommendation on entitlement and assessment in all disabilities, but they are not statutory bodies and their recommendations can be reviewed/revised by competent Medical Authority. No stress as mentioned in para54 of chapter VI of Guide to Medical Officers (Military Pensions), 2002 which gives guidelines for deciding attributability/aggravation in psychiatry disease cases was existing in the instant case. Hence the application is liable to be dismissed.

4. We heard the learned counsel Smt.Rekha representing the learned counsel for the applicant on record Sri.Mohan Jacob George and also Adv.Smt.Moly, learned Central Government Counsel and the learned JAG Officer, Major Varun Arora appearing for the respondents and considered the respective submissions.

5. The only point for determination is, whether the rejection of

disability pension to the applicant on the basis of the opinion of AFMSF-16 is sustainable for the reasons stated in the affidavit of the petitioner?

6. The Point :- We went through the original of AFMSF-16 relating to the applicant (original produced today by the respondents) held at Command Hospital (CH), Pune on 11th November 2005, wherein the disease under which the applicant was suffering was diagnosed as NEUROSIS-300 and the onset was stated to be from April 1983 at Rajasthan. In the summary of opinion dated 20/10/2005 it has been observed as follows:-

Background history reveals that the individual was admitted at MII Secunderabad on 16/4/83 for the complaints of fear, inadequate sleep and fearful dream of 5 months duration. His problems had originated while he was on a Divisional exercise in Rajasthan Sector in Nov 82 when he had visited a place haunted by spirits. Thereafter the ghost of the deceased girl used to haunt him. He had an affair with a professional girl in an out of bound of area where he was nabbed by CMP and awarded RI for 14 days. His behaviour was found abnormal and was found talking irrelevantly and refused to take food. He was managed with rest, sedatives, antidepressants, anxiolytics, occupational and individual psychotherapy. In view of the poor

response to treatment he was considered unsuitable for further service and hence invalidated out of service. (Opinion of the Psychiatrist dated 24 Aug 83 refers).

At page 4 of AFMSF-16, under the column in Part V Opinion of the Medical Board, the Board has originally opined as "neither attributable, but aggravated, connected with service". Thereafter, the said opinion was scored off and fresh opinion as "neither attributable, nor aggravated, not connected with service" has been entered. At column No.4 to Part V at page 5, for the query "In case of disability awarded Aggravation, whether the effects of such aggravation still persist?", originally it has been answered that "Yes, for a material period, effects will persist". Thereafter that opinion was scored off and "Not applicable" was entered in the said place. No explanation is forthcoming as to why the earlier opinion arrived at in respect of the disease under Part V was scored off and a new opinion was entered into. There is a pasted paper is also seen under Part V relating to both "attributable" and "aggravation" of the disease, wherein at paragraph (ii) it has been observed like "Symptoms commenced in Nov 82 while he was participating in intensive training in Formation exercise from 17 Nov 82-23 Mar 83 (AFMSF-18 DT. 15 June 83 attached to original IMB refers), the stress and strain of exercise, in uncongenial inclement conditions in Nov-Mar period in Rajasthan, for 04 months was continuous, considerable and sufficient for unmasking

underlying constitutional disorder and same adversely altered the progression of disease. Therefore it is reasonable to hold that disease was aggravated by conditions of military service during the period relevant to illness". Once arrived at such a definite conclusion by the Board of Doctors, suddenly it is not known what made them to struck off the said opinion and to over write that the disease was not aggravated by service.

7. Further, the observation in the summary of the opinion that the onset of the problem was in November 1982 when the applicant had visited a place haunted by spirits and thereafter the ghost of the deceased girl used to haunt him are all not supported by any worth referring materials. The other reason stated in the summary of opinion that since the applicant had an affair with a professional girl in an out of area, is also an irrelevant factor to be considered and to arrive at a conclusion that the disability was only due to the said affair. For the said indiscipline the applicant was admittedly awarded 14 days R.I. So, prima facie, it is seen that the opinion of the Medical Board under AFMSF-16 is a manipulated view without assigning any reason for substantiating the same. As per the Judgment of the Hon'ble Supreme Court in **Secretary, Ministry of Defence and Others v. Damodaran A.V. (Dead) through LRs and Others (2009) 9 SCC 140** followed by **Union of India v. Jujhar Singh**

AIR 2011 SC 2598, this Tribunal cannot interfere with the opinion of the Medical Board. Since the opinion of the Medical Board in AFMSF-16 is prima facie requires interference from this Tribunal, we direct the respondents to constitute a Review Medical Board and to examine the applicant physically once again and to arrive at a correct conclusion. The point is answered accordingly.

In fine, the impugned order under challenge is set aside and the respondents are directed to constitute a Review Medical Board within 3 months at INHS Sanjivani at Kochi and to examine the applicant once again and to arrive at a correct opinion. No costs.

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

Sd/-
JUSTICE A.C.A.ADITYAN
MEMBER (J)

mds/

(True copy)

Private Secretary