

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**

O.A.NO.30 OF 2010 ,  
M.A.Nos.21 of 2012 and 25 of 2012

WEDNESDAY, THE 8TH DAY OF FEBRUARY, 2012/19TH MAGHA, 1933

CORAM:

HON'BLE MR. JUSTICE A.C.ARUMUGAPERUMAL ADITYAN, MEMBER (J)

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

K. SOLOMAN, AGED 68 YEARS, S/O.JOHN DANIEL,  
EX-SERVICE NO.2549898 HAV,  
RESIDING AT KOTTANICKAL HOUSE,  
IRANIKUDY P.O., MAVELIKKARA – 689 515.

**APPLICANT:**

BY ADV. SMT. PRASANNA.C

***versus***

1. UNION OF INDIA, REPRESENTED BY ITS  
SECRETARY, MINISTRY OF DEFENCE,  
NEW DELHI.

**RESPONDENTS:**

2. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSION),  
DRAUPATHI GHAT, ALLAHABAD, UTTERPRADESH.

**Addl. Respondent:**

3. THE OFFICER IN CHARGE OF RECORDS,  
THE INTELLIGENCE CORPS, PUNE.  
(ADDL. R3 IMPEADED AS PER ORDER  
IN I.A. NO.61/2010 DATED 5.7.2010)

R1 TO R3 BY SR. PANEL COUNSEL SRI. S.KRISHNAMOORTHY.

**ORDER**

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

This application is for grant of disability pension. According to the applicant, who is a septuagenarian as on today, he joined as a Soldier in

the Indian Army on 24.5.1961 and after serving in many places including field areas, he was deployed in 1962 Indo-China War at field area (NEFA action) and was also deployed in war field areas in Poonch-Rajory Sector in Jammu and Kashmir and he has also participated in the Second Field War in 1965. At that time he had developed some mental illness and was hospitalised for quite sometime. The Army awarded Sainia Seva Medal, General Service Medal, Reksha Medal etc. to the applicant. In total, he was awarded with seven such medals for his meritorious service. He retired from service on 11.01.1978 and his discharge certificate Number is 3588 (Annexure A1). The applicant was discharged on low medical category – “BEE (Permanent)”. The applicant is entitled to disability element of pension since he was boarded out on medical grounds. In spite of his representation (Annexure A2) to the competent authority, he was denied disability pension. Thereafter, the applicant participated in Defence Pension Adalat at Kottayam. True copy of the said intimation dated 26.11.2003 from the Defence Pension Adalat, Kottayam is Annexure A3. The applicant had completed 16 years and 232 days continuous service in the Army. After exhausting all the statutory remedies, the applicant has approached this Tribunal for disability pension.

2. The respondents in their reply statement would contend that the applicant was enrolled in the Indian Army (Madras Regiment) on 24<sup>th</sup> May

1961 and was downgraded to low medical category - "BEE (Permanent)" with effect from 21<sup>st</sup> June 1977 due to Neurosis (Y34) and that the individual was invalided out of service under Army Rule 13 (3) III (v) on 11.1.1978. The applicant had put in 16 years, 7 months and 18 days service before being invalided out in low medical category. The claim for disability pension in respect of the applicant was submitted to P.C.D.A.(P), Allahabad vide Record Office Intelligence Corps Letter No.2549898/NR dated 19.9.1977. Even though the applicant was granted Invalid Pension vide S/IP/16/78 dated 3.2.1978, the claim for disability pension was rejected vide P.C.D.A(P) Allahabad letter No.G3/77/7798/V dated 6.1.1978. The Medical Advisor (Pension) attached with the C.D.A.(Pension) Allahabad was the competent Medical Authority for giving medical opinion on the aspects of assessment of disability and acceptance of disablement due to causes attributable to/aggravated by military service, as per Government of India, Ministry of Defence Letter No.1(1)/81/D(Pen-C) dated 21<sup>st</sup> June 1996. The applicant was informed regarding the rejection of his disability pension claim vide letter No.2549898/NR dated 18.1.1978 with an advice to file an appeal within six months in case he was not satisfied with the decision. However, no appeal was preferred by the applicant. The applicant has not availed the provisions of First Appeal to the Deputy Director General Armed Forces Medical Services and the second appeal to

DGAFMS as per Rule 17 of the Entitlement Rules 1982. His first request for reconsideration of disability pension was received vide application dated 9.4.2002, i.e. after 24 years of his retirement. Hence the rule position was cleared to the applicant vide their Letter No.2549898/DP/01/78 dated 7.10.2003. Under such circumstances, the application is liable to be dismissed with costs.

3. We heard the learned counsel Smt. C. Prasanna, appearing for the applicant and Sri.S.Krishnamoorthy, learned Senior Panel Counsel for the respondents and considered their respective submissions.

4. M.A.No.25 of 2012 is allowed since the respondents have complied with the necessary affidavit required under Rule 12A of the Armed Forces Tribunal (Procedure) Rules 2008. M.A. No.21 of 2012, the application to receive additional typed set of papers on behalf of the applicant, is also allowed.

5. The point for determination in this case is, whether the applicant is entitled to disability pension as per Rule 173 of the Pension Regulations for the Army, Part I, 1961?

6. **The point:** As per Rule 173 of the Pension Regulations for the Army, Part I, 1961, the primary condition required to grant disability pension, to an armed personnel is that the disability under which the individual is invalided from service must be opined by the competent

medical board, AFMSF-16, as to the effect that the same is attributable to or aggravated by military service and is assessed at 20% or over. Along with the typed set of papers, the applicant had produced a copy of the AFMSF-16 (Annexure A4), the medical board proceedings dated 27.7.1977. As per AFMSF-16, the opinion of the Medical Board (Part III), the disability under which the applicant was suffering viz. Neurosis (Y34) is aggravated due to service even though the same is not attributable to and connected with service. The relevant portion of the opinion of the Medical Board in Part III is as follows:

- "1. Did the disability exist before entering service? No
2. In respect of each disability, the Medical Board on the evidence before it will express its view as to whether:-
- (i) it is attributable to service during peace or under field service conditions; or
  - (ii) it has been aggravated thereby and remains so; or
  - (iii) it is not connected with service.

The board should state fully the reasons in regard to each disability on which its opinion is based.

Disability	A	B	C
NEUROSIS (Y34)	No	Yes	No

....."

But when the case of the applicant was recommended for disability pension to the P.C.D.A.(P) Allahabad, they have rejected the claim as seen from paragraphs 4, 5 and 6 of the reply statement filed by the respondents. At paragraph 4 of the reply statement, the respondents would admit that

P.C.D.A.(P) Allahabad vide their letter No.G3/77/7798 dated 6.1.1978 have rejected the claim of the applicant for disability pension. But the said impugned order of the P.C.D.A.(P) rejecting the claim for disability pension was not produced by the respondents. Only if the said impugned order of P.C.D.A.(P) Allahabad is produced, then only this Tribunal will be in a position to know whether there was any reason assigned in the impugned order of the P.C.D.A.(P),Allahabad for taking a different view from that of the view taken by the Board of Doctors who had rendered their opinion in AFMSF-16 to the effect that disability under which the applicant was suffering is aggravated due to service. At this juncture, the learned Senior Panel Counsel, has placed before us, the impugned order of the P.C.D.A.(P) Allahabad dated 6.1.1978. A perusal of the impugned order of P.C.D.A.(P) Allahabad dated 6.1.1978 will go to show that the claim for disability pension by the applicant was rejected on the ground that it was not attributable to military service, but there is absolutely no reasoning assigned in the impugned order as to why the opinion of the Medical Board in AFMSF 16 as to the effect that disease under which the applicant was suffering is aggravated due to military service cannot be accepted. The Honourable Supreme Court in **Secretary, Ministry of Defence and others vs. A.V.Damodaran (dead) through LRs. And Others**, (2009) 9 SCC 140 : 2009 (8) M.L.J.1475, has held that primacy shall be attached to the

opinion of the Medical Board, which principle was followed in Civil Appeal No.4281/2006 dated 15.7.2011. The relevant portion of the above decision runs as follows:

"I am of the the considered view that the Medical Board is an expert body and its opinion is entitled to be given due weight, value and credence ..... .."

30. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the Release/Invalidating Medical Board.

31. The said Release/Invalidating Medical Board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draw a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service.

32. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in view of the disease being capable of being improved.

33. All the aforesaid aspects are recorded and recommended in the form of AFMSF- 16. The Invalidating Medical Board forms its

opinion/recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and of course, the physical examination of the individual.

34. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service”.

Under such circumstances, the opinion of the Medical Board in AFMSF-16 will prevail over the impugned order of the P.C.D.A.(P) Allahabad vide letter No.G3/77/7798/V dated 6.1.1978.

6A. The next contention of the learned Senior Panel Counsel, Sri.S.Krishnamoorthy, is that there is inordinate delay on the part of the applicant in preferring the disability pension claim, as seen from the materials produced on the side of the applicant that he was informed about the decision taken by the P.C.D.A.(P), Allahabad in disallowing the claim of the applicant for disability pension (Annexure A3). It is seen that even during 2003, the decision of the P.C.D.A.(P) Allahabad rejecting the claim of the applicant for disability pension was known to the applicant, but the applicant has filed this Application before this Tribunal only in March 2010. There is no satisfactory explanation forthcoming from the side of the applicant for this delay. In **Union of India and Others vs. Tarsem**



**Singh**, (2008) 8 SCC 648, arising from Civil Appeal Nos.5151-5152 of 2008 arising out of SLP (C) No.3820-3821 of 2008, the relief of arrears of disability pension is liable to be restricted to three years prior to the date of filing of this application. The relevant portion of the said judgment runs as follows:

“To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition”.

Under such circumstances, as per the dictum laid down in **Union of India and Others vs. Tarsem Singh (supra)**, the applicant is also entitled to

disability pension, but arrears restricted to three years prior to the filing of this application. The point is answered accordingly.

7. In fine, the application is allowed, setting aside the impugned order of the P.C.D.A.(P), Allahabad, but the applicant is entitled to disability pension from three years prior to the date of filing of this application, i.e. w.e.f. March, 2007. The applicant will also be entitled to the benefit of enhancement of the percentage of disability element as per paragraph 7.2 of Letter No.1(2)/97/D(Pen-C) of the Government of India, Ministry of Defence, New Delhi dated 31<sup>st</sup> January, 2001. Time for compliance – three months, failing which the applicant will entail 9% interest for the arrears till the date of disbursement.

No costs.

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

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

DK.

(True copy)

Prl. Private Secretary

ARMED FORCES TRIBUNAL,  
REGIONAL BENCH, KOCHI.

O.A. No.30 of 2010

**ORDER**

DATED: 08.02.2012