

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

T.A.NO.123 OF 2010
W.P.(C) No.8753/2007 of the Hon'ble High Court of Kerala at Ernakulam

WEDNESDAY, THE 22ND DAY OF FEBRUARY, 2012/3RD PHALGUNA, 1933

CORAM:

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

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

RAJAN JOSE GEOERGE, GOKUL RUBBER ESTATE,
VITHURA, VITHURA P.O., VITHURA VILLAGE, **APPLICANT/PETITIONER:**
NEDUMANGAD TALUK, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI. VADAKARA V.V.N. MENON.

versus

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY, MINISTRY OF DEFENCE,
NEW DELHI – 110 011.

RESPONDENTS/RESPONDENTS:

2. THE OFFICER IN CHARGE OF RECORDS,
ARTILLERY RECORD, NAZEK ROAD CAMP,
MAHARASHTRA, PIN - 422 102.
3. THE CONTROLLER OF DEFENCE ACCOUNTS (PENSION),
ALLAHABAD, UTTAR PRADESH.
4. THE APPELLATE COMMITTEE ON FIRST APPEALS,
ARMY HEADQUARTERS, D.H.Q. P.O.,
NEW DELHI – 110 011, REPRESENTED BY ITS CHAIRMAN.
5. THE DEFENCE MINISTER'S APPELLATE COMMITTEE ON PENSION,
MINISTRY OF DEFENCE, NEW DELHI – 110 011
REPRESENTED BY ITS CHAIRMAN.

R1 TO R5 BY SR. PANEL COUNSEL SRI. TOJAN J. VATHIKULAM.

ORDER

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

Heard the learned counsel appearing for the applicant. The opinion of the Medical Board in AFMSF – 16 dated 7th January, 2002 is to the effect that disability under which the applicant is suffering is neither attributable to nor aggravated by military service, but the same is constitutional in nature (No, No, Yes at Part III of AFMSF-16). When the Tribunal revealed its mind that in view of the judgment of the Honourable Supreme Court in ***Secretary, Ministry of Defence vs. Damodaran A.V.(Dead) through LRs.*** (2009) 9 SCC 140 : 2009 (8) M.L.J. 1475, that primacy shall be attached to the opinion of the Medical Board and that this Tribunal cannot take a contrary view to that of the view taken in the opinion of the Medical Board, the learned counsel has come forward to withdraw this application with a liberty to challenge the opinion of the Medical Board in AFMSF-16 before the Review Medical Board and an endorsement made to that effect in the application.

2. In fine, the application, T.A. No.123 of 2010, is dismissed as withdrawn with a liberty to challenge the opinion of the Medical Board in AFMSF-16 by way of filing review application before the Review Medical Board to be constituted by the respondents. Time two months. It is made

clear that if the applicant approaches the respondents with an application for constitution of Review Medical Board, the Review Medical Board is to be constituted within two months from the date of the application at Thiruvananthapuram or nearby place and the same is to be disposed of within one month thereafter.

No costs.

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

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

DK.

(True copy)

Prl. Private Secretary

TA No.123 of 2010{*WP(C) No,8753/2007*
of the High Court of Kerala at Ernakulam}

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ARMED FORCES TRIBUNAL,
REGIONAL BENCH, KOCHI.

T.A. 123 of 2010
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High Court of Kerala at Ernakulam]

ORDER

DATED: 22.02.2012