

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

(Through Video Conferencing)

OA No. 5 of 2020

With

MA No.5 of 2020

Tuesday, the 21st day of September 2021

26.

CORAM

HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)

Ex Nb Sub G Samuel Sunder, aged 50 years

S.No.JC 843032X

S/o T S Govindan

No.5-15A, Joy-Sam Cottage, Theppa Kulam Street
Melagaram, Tenkasi District, PIN 627 818 (T.N)

..... Applicant

By: Mr M K Sikdar, Advocate

Vs

1. Union of India
Through the Secretary, Govt. of India,
Ministry of Defence
South Block, New Delhi 110011

2. The Chief of the Army Staff
Rep. by Adjutant General
Adjutant General's Branch, IHQ of MoD (Army)
Room No.11, Plot No.108 (West)
Brassey Avenue, Church Road, New Delhi 110 001

3. The Officer in Charge
Defence Security Corps Records
PIN 901 277, C/o 56 APO

4. Principal Controller of Defence Accounts (Pensions)
Draupadi Ghat, Allahabad – 211014

.....Respondents

By: Shri K Ramanamoorthy, CGC

ORDER

1. The Applicant filed this OA to call for the records and quash the impugned order No.B/38046A/403/2017/AG/PS-4(2nd Appeal) dated 16.09.2018 passed by the 2nd Respondent and direct the Respondents to declare the Disability as aggravated by the Military Service and grant Disability Element of Disability Pension @ 30% from i.e. 01.05.2016 for life with benefits of Broadbanding @ 50%.

2. The Applicant was enrolled in Indian Army on 11.1.1988 and discharged from service on 01.06.1993 at his own request. The Applicant was re-enrolled in Defence Security Corps Centre on 05.04.1996, medically fit as Shape 1 for Second Service in the Army. The Applicant submits that he was promoted to the rank of Nb Subedar and discharged from DSC on 30.04.2016 in Low Medical Category as S1 H1A1 P2(P) E1 due to the ID, "High Grade AV Block (Intermittent Trifacicular Block Post PPI, DDDR". The Applicant further submits that the Release Medical Board held on 23.10.2015 assessed the ID @ 30% for life but erroneously opined the ID as neither attributable to nor aggravated by Military Service. The Applicant is in receipt of Service Pension vide PPO No.S/24876/2016(Army) dated 9.5.2016. The Applicant states that the 1st Appeal dated 01.8.2016 and the 2nd Appeal dated 16.10.2017 preferred by him were rejected by the 2nd Respondent on untenable grounds vide letter dated 03.08.2017 and the impugned order dated 16.09.2018 respectively, stating that the onset of the ID was in a peace station with no antecedent history of heart disease/infection and the

individual continued to serve in peace station till his retirement and hence, the ID is conceded as neither attributable to nor aggravated by service. The Applicant submits that at the time of joining Army, he was neither suffering from any ailments nor had any history of constitutional diseases in his family. Hence, aggrieved by the action of the Respondents, he has filed this Application seeking the relief as prayed for.

3. The Respondents admit that the Applicant was enrolled in the Indian Army on 11.1.1988 and discharged from service on 31.5.1993 under Rule 13(3) Item III (iv) after rendering 5 years, 4 months and 16 days. Thereafter the Applicant was enrolled in DSC on 05.04.1996 and opted to count his former service towards DSC service. The Applicant was not granted further extension of service beyond 05.04.2016 as he was placed in permanent Low Medical Category P2 w.e.f. 01.07.2015 for the ID "High Grade AV Block Intermittent Trifascicular Block P/PPI/DDDR" and hence he was discharged from DSC service w.e.f. 30.04.2016 after rendering 25 years 05 months and 12 days of qualifying service in both the spells of service. The Respondents further submit that the Applicant was in receipt of Service Pension for life vide PPO No.S/24876/2016(Army). Prior to his discharge, the Applicant was brought before the duly constituted Release Medical Board on 23.10.2015 which assessed his disability, "High Grade AV Block Intermittent Trifascicular Block P/PPI/DDDR" and conceded the disability as neither attributable to nor aggravated by military service with 30% disability and Nil disablement qualifying Disability Pension for life. The Learned

Counsel for the Respondents submits that the First and Second Appeals of the Applicant for grant of Disability Pension were rejected on the ground that the onset of the ID was in a peace station with no antecedent history of heart disease/infection and the individual continued to serve in peace station till his retirement. Therefore, the Respondents pray for dismissal of the OA being devoid of merit.

4. We have heard the arguments of the Learned Counsel for the Applicant as well as the Respondents and also carefully perused the material placed on record.

5. It is a fact that the Applicant was enrolled in the Army on 11.1.1988 and was discharged on 31.5.1993 after rendering 5 years, 4 months and 16 days of service. The Applicant was re-enrolled in Defence Security Corps on 05.04.1996 and was discharged from DSC Service w.e.f. 30.04.2016 under the provisions of Army Rule 13(3) Item I (i) (a) after rendering 25 years 5 months and 12 days of qualifying service. Prior to the discharge, the Applicant was brought before a constituted Release Medical Board which assessed his disability, "High Grade AV Block Intermittent Trifascicular Block P/PPI/DDDR" as neither attributable to nor aggravated by military service with 30% disability for life.

6. In the present case, the Applicant is already receiving Service Pension from both spells of Service and hence, he is not entitled for Service Element of Disability Pension. However, he is eligible for Disability Element as his ID was contracted during his Second Service as

per the SC Judgement in the case of Union of India & Anr vs Rajbir Singh in Jt 2015 (2) SC(392):

"11. From a conjoint and harmonious reading of Rules 5, 9 and 14 of the Entitlement Rules (Supra) the following guiding principles emerge :-

(i) A member is presume to have been in sound physical and mental condition upon entering service except as to physical disabilities noticed or recorded at the time of entrance;

(ii) In the event of being discharged from service on medical grounds at any subsequent stage it must be presumed that any such deterioration in his health which has taken place is due to such military service;

(iii) The disease which has led to any individual's discharge or death will ordinarily be deemed to have arisen in service, no note of it was made at the time of the individual's acceptance for military service; and

(iv) If medical opinion holds that the disease, because of which the individual was discharged, could not have been detected on medical examination prior to acceptance of service, reasons for the same shall be stated".

7. The issue relating to the grant of rounding off benefit of the Disability Element of Disability Pension is no longer *res integra* in view of the order passed by the Hon'ble Apex Court on 10.12.2014 in Civil Appeal No 418 of 2012 in the case of **Union of India & Ors. Vs. Ram Avtar & Ors.**, whereby the Hon'ble Apex Court has directed the Respondents to grant the said benefit also to the personnel who have not only been invalided out from service but to other categories also.

8. In view of the above, it is apparent that the Applicant is eligible for Disability Element of Pension and Broadbanding of Disability from 30% to

50% as the Applicant was discharged from DSC Service on superannuation in Low Medical Category.

9. In-fine, this Application is allowed. The Respondents are directed to pay the Applicant, Disability Element of Disability Pension duly broad banded from 30% to 50% wef 1.5.2016 within a period of four months from the date of receipt of copy of this order, failing which, the arrears shall carry interest at 8% per annum till the date of actual payment. The arrears of Pension is restricted for a period of three years prior to the date of filing of the Original Application, i.e. 06.01.2020 in accordance with the principles laid down in the judgement of the Hon'ble Apex Court in UoI & Ors vs Tarsem Singh, reported in (2008) 8 SCC 648. The arrears will be paid within three months from the date of receipt of this order, failing which, the arrears shall carry interest at 8% per annum till the date of actual payment. The OA is ordered accordingly.

10. We make it abundantly clear that, if, in case the final outcome of the case of Union of India Vs Ex Sgt Girish Kumar, pending before the Hon'ble Apex Court, is favourable to the Applicant, it shall be implemented and arrears will be paid to the Applicant from the date made applicable on the Broadbanding of Disability Pension by the Hon'ble Apex Court. Consequently MA stands disposed off.

11. No order on costs.

Sd/-
LT GEN BOBBY CHERIAN MATHEWS
MEMBER (A)

Sd/-
RAJENDRA MENON
CHAIRPERSON

