

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.25 of 2013

Wednesday, the 14<sup>th</sup> day of August, 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH  
(MEMBER-JUDICIAL)

AND

THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA  
(MEMBER-ADMINISTRATIVE)

R. Chandra Sekaran,  
Ex-CPL 679535N,  
17 WING AF,  
7, Vallalar Street, Thiru Vi Ka Nagar,  
Chitlapakkam Post,  
Chennai-600064.

... Applicant

By Legal Practitioners:  
M/s. A.M. Packianathan Easter &  
S. Hemalatha

Vs.

1. Union of India,  
Rep. by the Secretary to Government,  
Ministry of Defence,  
Parliament House,  
New Delhi-110 001.
2. The Directorate of Air Veterans,  
Represented by Gp Capt Dir-III,  
Subroto Park,  
New Delhi-110 010.

... Respondents

Mr. B. Shanthakumar, SPC

**ORDER**

(Order of the Tribunal made by  
Hon'ble Justice V. Periya Karuppiah,  
Member(Judicial)

1. This is an application filed by the applicant praying to set aside the impugned Order No.Air HQ/99798/2/679535/DAV(DP) dated 18.2.2013 passed by the 2<sup>nd</sup> respondent and to direct the respondents to grant Invalid pension, from 1.1.2006 as recommended by VI Central Pay Commission and to pay the minimum pension of Rs.3500/- together with eligible dearness allowance per month with costs.

2. The facts as enumerated in the application would run as follows :-

The applicant was enrolled in the Indian Air Force after due medical examination as Meterological Assistant on 10.7.1984 and was posted to various stations and he was discharging his duties well without any interruption or disturbance. The applicant developed some sort of sickness due to the climate and other conditions in the work place at Gorakhpur and his vision was affected. When he was referred to medical specialist at Bangalore, it was found that he was not fit for the trade for which he was selected as per the Certificate dated 20.7.1993. The said disability was aggravated due to the service and it happened only during his service. He

was having better vision at the time of his recruitment. While the applicant was removed from his trade, an opportunity was given for remustering to any trade like Clerk GD, Clerk EA, Clerk PA and Equipment Assistant. As the trades offered were not to his liking, he expressed his unwillingness for remustering to other trades. Therefore, he came to be discharged from service by an Order dated 7.10.1994 from 17 Wing AF, Gorakhpur, after he had put in a service of 10 years 3 months and 22 days. The applicant thereafter, returned and settled at Chennai. In the year 2006, VI Central Pay Commission recommended Invalid pension for those who were invalidated and had put in a qualifying service of 10 years, but less than 15 years. The said right accrued to the applicant was made known to him only through his well-wishers from the Armed Forces. He had browsed the Internet and got the relevant extracts of the Pensioner's Handbook for Airmen and NCs(E). On the basis of the said recommendation of VI Central Pay Commission, the applicant sent a representation to the 2<sup>nd</sup> respondent on 23.11.2012 requesting for Pension/Invalid pension, but there was no action till 28.1.2013. Therefore, he sent a reminder on 28.1.2013 and requested for Invalid pension as per his earlier representation dated 23.11.2012. The 2<sup>nd</sup> respondent passed an Order of denial dated 18.2.2013 informing the applicant that he was not entitled to the disability pension as per Rule 153-A of Pension Regulations for the Air Force, 1961 (Part-I). The request for the grant of Invalid pension could not also be considered as per Rule-171 of Pension Regulations for the Air Force, 1961 (Part-I). The

provisions in Rule-171 is not applicable as the applicant was not assessed by the Board in respect to his disability. The applicant was recommended for remustering to other trades owing to the loss of colour vision of CP-IV (Defective Unsafe) and since he did not accept a remuster to other trades, he was discharged. The respondents also relied upon the provisions of Rule 153-A. Regulation-172 of Pension Regulations for the Air Force, 1961 (Part-I) stipulates the qualification for an Invalid pension at 10 years of service. Para-23 of Chapter-III of Pensioner's Handbook for Airmen and NCs(E) prescribes the minimum rate of Invalid pension at Rs.3500/- per month + DA with effect from 1.1.2006 as per the recommendation of VI Central Pay Commission. The claim of the applicant seeking for Invalid pension under Rule 153-A coupled with Rule-172 of Pension Regulations for the Air Force, 1961 (Part-I) was wrongly rejected by the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent should follow the recommendation of VI Central Pay Commission guidelines and grant the admissible Invalid pension thereon. However, it was not done so. The Order passed on 18.2.2013 rejecting the claim of the applicant for Invalid pension as per the provisions of Pension Regulations for the Air Force, 1961 (Part-I) and the recommendations of VI Central Pay Commission is, therefore, liable to be set aside and the respondents should have paid Invalid pension as prayed for by the applicant from 1.1.2006 onwards and the arrears may be directed to be paid with interest and costs.

3. The objections raised by the respondents in the Reply Statement would be as follows :-

The applicant was enrolled in the Indian Air Force on 10.7.1984 and was discharged from service on 31.10.1994 under the clause "*Being medically unfit for Met Asst duty and un-willing to re-muster to any other trade.*" He has rendered 10 years and 114 days of regular service. The claim of the applicant for the grant of Invalid pension could not be acceded to in the light of the relevant rules and regulations in vogue. The applicant was unfit to the trade Meteorology Assistant due to disability in Colour Vision of CP-4 (Defective Unsafe) and the applicant had declined to re-muster to any other trade of Clerk GD, Clerk EA, Clerk PA, EQPT Assistant. Therefore, the respondents had no other alternative, except to discharge him from service. The reliance placed by the applicant on Rule 153-A of Pension Regulations for the Air Force, 1961 (Part-I) could not be accepted because the individuals who are placed in a low medical category permanently and were discharged, no alternative employment in their own trade was available or could not be provided or who are unwilling to accept the alternative employment and were discharged before the completion of their engagement shall be deemed to have been invalided from service. In the case of the applicant, he was discharged in Medical Category 'AYE' (A4G1) through a normal Medical Examination Report as a result of unwilling to re-muster to any other trade as recommended by the medical authority. The

applicant was not placed in low medical category through a medical board and as such, his case had not been processed for adjudication by Pension Sanctioning Authority for ascertaining the percentage of attributability aspects for the grant of disability pension. As per Rule-171 of Pension Regulations for the Air Force, 1961 (Part-I), an invalid pension/gratuity will be admissible in accordance with the Regulations. Since the applicant was not discharged in low medical category, he is not entitled to the grant of invalid pension. The Order passed by Hon'ble Armed Forces Tribunal, Principal Bench, New Delhi, in TA No.367/09 (transferred from WP No.2185/97) was in respect of a particular individual, namely Ex Cpl Ram Avatar and it was implemented, which is not applicable to the present case. Therefore, the application may be dismissed as being devoid of merit.

4. On the above pleadings, the following points were framed for consideration, in this application :-

- 1) Whether the applicant is entitled to Invalid pension as per the Rules envisaged in Pension Regulations for the Air Force, 1961 (Part-I) and the recommendations of the VI Central Pay Commission ?
- 2) To what relief the applicant is entitled for ?

5. Heard Mr. A.M. Packianathan Easter, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel, assisted by Mr. M. Tiwari, JWO (Legal Cell), appearing for the respondents.

6. The Learned Counsel for the applicant would submit in his argument that the applicant's claim for Invalid pension was wrongly rejected by the 2<sup>nd</sup> respondent on 18.2.2013 in their Order produced in Annexure-A9. He would further submit that the reasons mentioned in the said letter that Rule 153-A of Pension Regulations for the Air Force, 1961 (Part-I) would not apply to the case of the applicant is *ex facie* a wrong interpretation and was due to non-application of mind. He would also submit that the interpretation regarding Rule-171 of Pension Regulations for the Air Force, 1961 (Part-I) was also not in order in the said letter and it is also against the interpretation of law. He would also submit that the case of the applicant that he was considered medically unfit to his trade, namely Meteorology Assistant, was an admitted fact and the applicant was offered to remuster any other trade, which was not accepted by the applicant. He would further submit that the reason for his discharge under the clause "*Being medically unfit for Met Asst duty and un-willing to re-muster to any other trade*" would denote that the applicant was medically unfit and, therefore, he was offered to remuster himself to any other trade. The interpretation of the 2<sup>nd</sup> respondent with regard to medical disability is not correct. In a similar case filed before the Delhi High Court in WP No.2185/97, which was transferred

to the file of Principal Bench, AFT, New Delhi, in TA No.367/09, it was held that the term "medically unfit for continuing the particular trade" would be amounting to being placed under low medical category and the subsequent discharge for not willing to remuster to any other trade would be amounting to a discharge on medical ground and the provisions of Rule 153-A, 171 and 172 of Pension Regulations for the Air Force, 1961 (Part-I) were applied. He would further submit that the applicant is also on the same footing as that of the petitioner in that case and the applicant also completed 10 years of service, but below 15 years and, therefore, he ought to have been granted Invalid pension, if not the disability pension. He would further insist in his argument that the VI Central Pay Commission had also introduced Para-23 of Chapter-III Pensioner's Handbook for Airmen and NCs(E) and according to the said provisions also, the applicant is entitled for the minimum of Invalid pension at Rs.3500/- per month + DA with effect from 1.1.2006, when the quantum of disability which led to invalidment was not assessed. He would, therefore, request us to set aside the impugned Order dated 18.2.2013 and to grant Invalid pension as per the provisions of Rule 153-A, 171 and 172 of Pension Regulations for the Air Force, 1961 (Part-I) coupled with para-23 of Chapter-III as recommended by VI Central Pay Commission and thus the application may be allowed.



7. The Learned Senior Panel Counsel would submit in his argument that the fitness of the applicant for the trade 'Meterology Assistant' could not be considered since he was unfit for the said trade due to disability in Colour Vision of CP-4 and, therefore, he was offered remustering to any other trade to which he also declined and, therefore, he was discharged from service on 31.10.1994. He would also submit that the applicant was not placed in low medical category nor was found disabled and recommended by the Release Medical Board or any other medical board to be released. He would also submit that the disability was also not assessed and, therefore, it could not be treated as release on disability or invalidment and the provisions of Rule 153-A would not apply. He would also submit that the provisions of Rule-171 of Pension Regulations for the Air Force, 1961 (Part-I) is meant for an individual who was invalided out of service and, therefore, the applicant cannot invoke the said provision in his favour since he was not invalided out from service by constituting an Invaliding Medical Board. He would insist in his argument that the reliance as placed by the Learned Counsel for the applicant on the decision of Principal Bench, AFT, New Delhi in TA No.367/09 (WP No.2185/97 of Delhi High Court) would not be available or apply to the facts of the case and the implementation of the said Order would not help the applicant to seek a similar relief before this Tribunal. He would also submit that the reference as to the grant of Invalid pension on and from 1.1.2006 as per the recommendation of the VI Central Pay Commission Report cannot be applied to the present case since the applicant was not

invalidated out from service. He would, therefore, request us to dismiss the claim of the applicant.

8. We have given anxious thoughts to the arguments advanced on either side. We have also perused the records and other relevant papers.

9. It is an indisputable fact that the applicant was enrolled in Indian Air Force on 10.7.1994 as Meteorology Assistant and during the service, he was disabled in Colour Vision of CP-4 (Defective Unsafe) and not fit for the said trade and, therefore, the medical authority recommended him to remuster any other trade. However, he was in medical category 'AYE' (A4G1) and fit for other trades like Clerk GD, EA, PA and Equipment Assistant but the offer put forth for remustering such trades was declined by the applicant and, therefore, he was discharged on 31.10.1994 under the clause "*Being medically unfit for Met Asst duty and un-willing to re-muster to any other trade.*" Thus, it is clear that the applicant was having a qualifying service of 10 years and 114 days of regular service, at the time of his discharge.

10. According to the applicant, he was made aware of the fact that VI Central Pay Commission had recommended Invalid pension for those who were invalidated and has put in 10 years of service, but less than 15 years in the year 2006 by his well wishers in the Armed Forces. Accordingly he

claimed Invalid pension from the respondents, which was rejected by the 2<sup>nd</sup> respondent. Whether such denial of Invalid pension is in accordance with law is the question. The impugned Order dated 18.2.2013 produced as Annexure-A9 contains the denial, that the applicant cannot invoke the provisions of Rule 153-A of Pension Regulations for the Air Force, 1961 (Part-I) as well Rule-171. The reason attributed by the 2<sup>nd</sup> respondent was that the applicant was not placed in lower medical category through a Medical Board and, therefore, the two Rules (i.e.) Rule 153-A and 171 of Pension Regulations for the Air Force, 1961 (Part-I) were not applicable to the applicant. The unfitness of the applicant for the trade of Metrology Assistant was an admitted one and it was also supported by the Medical Examination Report produced in Annexure-A2. In the said Report, the Eye Specialist at CHAF, Bangalore, opined that the applicant was unfit for Metrology Assistant trade and recommended change of his trade, as per IAP 4303, to other trades. The disability as opined by the Eye Specialist of CHAF, Bangalore, would categorically show that the applicant was medically unfit for the trade Meterology Assistant. The offer put forth by the respondents to remuster to other trades, namely Clerk PA, Clerk EA, Clerk GD or Eqpt/Assistant, was not accepted by the applicant. The unwillingness Certificate was also given by the applicant in Annexure-A3 and it was accepted and the Medical Unfitness Certificate produced, in Annexure-A4, was followed by discharge of the applicant from the Meterology Assistant trade.

11. For the purpose of appreciating the rival contentions of either side, it has become necessary for us to extract the provisions of Rule 153-A and Rule-171 of Pension Regulations for the Air Force, 1961 (Part-I) :-

***"Rule 153-A of Pension Regulations for the Air Force***

***1961 (Part-I)*** – *Individuals who are placed in a lower medical category (other than ApGp) permanently and who are discharged because no alternative employment in their own trade / category suitable to their low medical category could be provided or who are unwilling to accept the alternative employment or who having retained in alternative appointment are discharged before completion of their engagement, shall be deemed to have been invalided from service.*

***Rule 171 of Pension Regulations for the Air Force***

***1961 (Part-I)*** – *An invalid pension/gratuity will be admissible in accordance with the Regulations in this Section to -*

*(a) an individual who is invalided out of service on or after 01<sup>st</sup> April 1964 on account of a disability which is neither attributable to nor aggravated by service. or*

*(b) an individual who is invalided out of service on or after 01<sup>st</sup> April 1964 on account of a disability assessed at less than 20% and which is attributable to or aggravated by service."*

12. The applicant was admittedly given an opinion of medically unfit to identifying the colours and, therefore, found unfit for Meterology Assistant trade. No doubt, that would put him in 'AYE' (A4G1) which would certainly prevent the applicant from performing the duty of Meterology Assistant trade. This would certainly amount to low medical category and, therefore, he was found not fit for the performance of the Meterology Assistant trade and it is not necessary that an Invaliding Medical Board should be constituted for invaliding the applicant or for assessing the medical disability of the applicant.

13. In a case between Ex. Cpl. Ram Avtar Vs. Union of India and Others, before Armed Forces Tribunal, Principal Bench at New Delhi in TA No.367/2009 (WP No.2185/1997 of Delhi High Court), it was ordered to pay an Invalid pension to the applicant on the similar circumstances. The relevant portion relied upon by the applicant would be as follows :-

*"In the present case the incumbent has already put 12 years and 350 days. For persons who have been going out on medical ground and not inclined to accept lower trade for such persons 10 years of service will be qualifying service. In view of this, we are of the opinion that petitioner has wrongly been denied the pension. Petitioner is entitled to pension as per Rule 172 as a result petition is allowed and petitioner shall be paid*

*pension as per Rule 172. This should be worked out within a period of three months from today. All the arrears should be paid to the petitioner and arrears will carry interest @ 12% p.a. No order as to costs."*

14. The facts as stated in the said Judgement are similar to the facts of the present case. In the said case, the Principal Bench of New Delhi had considered the discharge on the medical ground, where alternative trade was not accepted by the individual, would virtually amount to invaliding out from service as being a low medical category. In this case also, the applicant was found medically unfit to discharge the duties of Metrology Assistant and he was not willing to accept the lower trade and, therefore, he was discharged. In the said circumstances, the applicant should have been considered as medically invalided out of service by the respondents by following the precedent in the Judgement of Principal Bench. But it was not done so. It was argued that the said case was having different set of facts and the said Judgement was not applicable to the present case. However, it was admitted that the Order passed by the Principal Bench, New Delhi, in TA No.367/2009 was implemented. The said argument advanced by the Learned Senior Panel Counsel that the precedent as laid down by the Principal Bench, New Delhi, in TA No.367/2009 is not applicable to the present case, is not correct. As per the dictum laid down by the Principal Bench, the applicant herein should also be considered as invalided out from

service and the respondents ought to have applied the provisions of Rule 153-A, 171 and 172 of Pension Regulations for the Air Force, 1961 (Part-I) in his favour in order to grant an Invalid pension.

15. Further more, the Report of the VI Central Pay Commission would enure the benefit in favour of the applicant. The relevant Rule in para-23 of the said Report would run as follows :-

*"23. Whenever an individual is invalidated out from service under the following clauses on completion of minimum 10 years of qualifying service but less than 15 years and his disability pension claim is rejected then he is eligible for Invalid Pension. The minimum rate of Invalid Pension is **Rs.3500/- pm + DA.** w.e.f. **01 Jan 2006** as per recommendation of VIth CPC.*

- (a) On having been found medically unfit for further service in IAF.*
- (b) Being medically unfit for present trade and unwilling to remuster to other trade."*

16. A careful reading of the said para from Pensioner's Handbook for Airmen and NCs(E) published by Air Force Record Office, Subroto Park, New Delhi-110010, would make us understood that the minimum rate of Invalid pension is fixed at Rs.3500/- per month + DA which has to be given with

effect from 1.1.2006 and the sub-clause (a) and (b) would explain about medically unfit for the present trade and not willing for remustering, but it does not require a separate constitution of medical board for finding the individual medically unfit. Therefore the applicant, who had completed 10 years of service but below 15 years of qualifying service and was not given any disability pension, is entitled to Invalid pension despite no medical board had been convened. As per the recommendation of VI Central Pay Commission also, the applicant is entitled to the relief as sought for. Accordingly, we are of the consensus to accept the case of the applicant and thus the point is decided in favour of the applicant.

17. **Point No.2:** In view of the discussions held above in the earlier point, we are of the considered view that the rejection of Invalid pension as sought for by the applicant in the impugned Order dated 18.2.2013 is contrary to the provisions of Rule 153-A, 171 and 172 of Pension Regulations for the Air Force, 1961 (Part-I) and to the recommendations of VI Central Pay Commission in respect of Invalid Pension contained in para-23 of the Pensioner's Handbook for Airmen and NCs(E). Therefore, the impugned Order dated 18.2.2013 is liable to be set aside and the applicant is entitled to the minimum rate of Invalid pension at Rs.3500/- per month with DA as per the recommendations of VI Central Pay Commission. The respondents are, therefore, directed to calculate the Invalid pension on and from



1.1.2006 to be paid and to pay the arrears within a period of three months from today. In default to pay the amount within the said period, the arrears will carry interest of 12% per annum.

18. In fine, the application is allowed with the above directions. However, there is no order as to costs.

Sd/-  
LT GEN (Retd) ANAND MOHAN VERMA  
(MEMBER-ADMINISTRATIVE)

Sd/-  
JUSTICE V.PERIYA KARUPPIAH  
(MEMBER-JUDICIAL)

**14.8.2013**  
(True Copy)

**Member (J)** – Index : Yes / No  
**Member (A)** – Index : Yes / No

Internet : Yes / No  
Internet : Yes / No

NCS

To:

1. The Secretary to Government,  
Ministry of Defence,  
Parliament House,  
New Delhi-110 001.
2. The Directorate of Air Veterans,  
Represented by GpCaptDir-III,  
Subroto Park,  
New Delhi-110 010.
3. M/s. A.M. Packianathan Easter &  
S. Hemalatha  
Counsel for applicant.
4. Mr. B. Shanthakumar, SPC  
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5. OIC/Legal Cell (Air Force),  
Avadi,  
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6. Library, AFT, Chennai.

HON'BLE JUSTICE V. PERIYA KARUPPIAH  
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