

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No. 26 of 2015

Wednesday, the 26th day of August, 2015

The Honourable Justice V.Periya Karuppiah
(Member-Judicial)
and
The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

Ex Rect C Jenu No.15315935H
S/o A Chellappan, aged 38 years
House No.17-71 C, Munchirankadu Street
Village Nattalam, PO Kunnathur
Vilavancodu, Dist.-Kanyakumari
Tamil Nadu, PIN: 629162

...Applicant

By Legal Practitioner:
Mrs.Tonifia Miranda

vs

1. Union of India
Rep by its Secretary
Ministry of Defence, New Delhi – 110 011
2. Chief of the Army Staff
DHQ PO, New Delhi-110011
3. Records Office
Masdras Engineer Group
Sivanchetty Garden Post Office
Post Box 42001, Bangalore – 42
Pin: 900 493, C/o 56 APO
4. The Principal Controller of Defence Accounts
Office of PCDA (Pension)
Pin: 211 014

... Respondents

Mr.M.Arvind Kumar, SCGPC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

This O.A. has been filed by Ex-Rect C.Jenu seeking to set aside the order dated 17.11.2000 issued by the 3rd respondent and consequently direct the respondents to grant disability pension from 15.03.1998 till date along with arrears and interest.

2. Briefly, the applicant states that he was enrolled as a recruit in the Indian Army on 24.02.1996. He was undergoing a 2 year training and while at MEG Centre, he suffered an attack of typhoid and was admitted to CH Bangalore on 26.10.1997. As he was also suffering from Chicken Pox, he was kept under quarantine. The applicant alleges that in view of heavy medication and wrong combination of medicines given to him, he contracted mental illness and was referred to Psychiatric Ward on 07.01.1998. He was diagnosed with 'Unspecified Psychosis 298'. He was placed in permanent Low Medical Category 'EEE' and was invalided out of service on 24.02.1998. He avers that his family had no history of mental disorders and his condition was due to the wrong administration of drugs for his illness. The applicant submits that he made representations and appeals to the authorities to consider his plea for grant of disability pension and to conduct a Re-Survey Medical Board but his claims were rejected. Hence, the applicant has sought this Tribunal's intervention to quash the impugned order dated 17.11.2000 and to grant him the benefit of disability pension and other attendant benefits.

3. The respondents in their reply statement would state that the applicant was enrolled in the Army on 24 .02.1996 and while undergoing training, he was admitted

to Air Force Command Hospital, Bangalore on 26.10.1997 for enteric fever and later he developed Chicken Pox and also recovered. On 07.01.1998, the applicant was again admitted to CH, Bangalore for 'Unspecified Psychosis (296)' and subsequently discharged on 24.02.1998. A duly constituted Invaliding Medical Board held at CH, Bangalore on 18.02.1998 had placed the applicant in Low Medical Category 'EEE' and recommended for invaliding him out of service which was also duly approved by Deputy Director of Medical Service, Headquarters ATNK & G Area on 23.02.1998. The applicant's disablement was assessed by the IMB as neither attributable to nor aggravated by military service and the percentage of disablement was assessed at 60% for 5 years. The applicant was invalided out of service on 24.02.1998 after 02 years and 21 days of service, under Rule 13 (3) (iv) of Army Rules 1954.

4. The respondents state that the applicant's claim for disability pension was rejected by the CDDA (P) on the ground that the disability was neither attributable to nor aggravated by military service. The appeal preferred by the applicant was also rejected by the Central Government vide their letter dated 02 November 2000 upholding the decision of the CCDA (P), Allahabad for the same reasons. The applicant was accordingly intimated *vide* Records, Madras Engineer Group dated 17 November 2000. The respondents further state that as per Rule 173 of Pension Regulations for the Army Part-I (1961), unless otherwise specifically provided, a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. As the disability of the applicant was considered as neither attributable to nor aggravated by military service by the authorities concerned, he

was not entitled to get disability pension within the framework of rules on the subject.

5. In view of the foregoing, the respondents submit that the Original Application filed by the applicant and allegations made therein lack substance. They pray that the application be dismissed being devoid of merit.

6. We have heard the arguments of Mrs. Tonifia Miranda, learned counsel for the applicant and Mr.M.Arvind Kumar, learned SCGPC assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing on behalf of respondents.

7. At the time of invaliding out of the applicant on 23.02.1998 the Invaliding Medical Board had placed the applicant in Low Medical Category 'EEE' and assessed the disability at 60 *per cent* for 5 years. Therefore, the 5 year period expired on 22.02.2003. Hence, it is not possible for us to assess the applicant's existing medical condition for adjudicating on his eligibility for disability pension. Since no Review has been done nor the applicant had asked for the same all these years, it has become necessary for us to assess the present medical disability condition of the applicant, degree of disability, if any, and its likely duration before we adjudicate any further. Therefore, we are of the considered view that the applicant be referred to a Re-Survey/Review Medical Board to assess the present medical condition of the applicant for the disability "Unspecified Psychosis (298)"

8. In view of the foregoing, the respondents are hereby directed to constitute or convene a Re-Survey/Review Medical Board at Air Force Command Hospital, Bangalore, for the examination of the applicant towards the aforesaid purpose within a month from the date of this order and to inform the applicant the date and venue

for his presence and to submit the report of the said Medical Board proceedings within two months thereafter. The Medical Board will give its opinion only on the present medical condition of the applicant for the said disability, i.e., "Unspecified Psychosis 298", the degree of disability and the probable duration of the degree of disablement. The respondents are directed to place the said Re-Survey / Review Medical Board proceedings before us on 30.11.2015.

Sd/-

Lt Gen K Surendra Nath
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah
Member (Judicial)

26.08.2015
[True copy]

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

To

1. The Secretary
Ministry of Defence, New Delhi – 110 011
2. Chief of the Army Staff
DHQ PO, New Delhi-10
3. Records Office
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4. The Principal Controller of Defence Accounts
Office of PCDA (Pension)
Pin: 211 014
5. The Commandant
Air Force Command Hospital
Bangalore
6. Mrs.Tonifia Miranda
Counsel for the applicant
7. Mr.M.Arvind Kumar, SCGPC
Counsel for respondents
8. Officer in-Charge
Legal Cell, ATNK & K Area,
Chennai-600009.
9. Library, AFT, RB, Chennai.

Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

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