

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No. 59 of 2014

Tuesday, the 04th day of August, 2015

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

A.Savarimuthu
Son of Ashirvatham
(formerly Havildar, No.1260923)
Regt of Arty/1612/161 Fd Regiment
Now residing at No.6/109 'A' Type
SIDCO Nagar, Villivakkam, Chennai – 600049

...Applicant

By Legal Practitioners:
M/s R.Veeramani and N.Easwaran

vs

1. Union of India
Represented by Secretary to Government
Ministry of Defence, New Delhi – 110 011
2. The Chief of Army Staff
Army Headquarters, New Delhi – 110 011
3. The Chief Controller of Defence Account (Pension)
Allahabad
4. Director General of Artillery (Arty 3)
General Staff Branch, Army Headquarters
DHQ PO, New Delhi – 110 011
5. Record Officer
Topkhana Abhilaka, Artillery Record
Nasik Road Camp

...Respondents

Mr.N.Ramesh, CGSC

ORDER

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

We have passed an order to this OA on 20.01.2015 with the directions to convene a Re-survey Medical Board for the purpose of assessing the claim of disability 'Hypothyroidism (244 V 67)'. At request of the respondents, such time limit has been extended and finally the respondents convened the Medical Board at MH, Chennai on 04 March 2015 and the applicant was admitted and examined as directed by this Tribunal.

2. The Medical Board was directed to give its opinion on the present medical condition of the applicant for the said disease, the degree of disability if any and probable duration of the degree of disablement. The respondents have now submitted the report of the Re-Survey Medical Board proceedings with their opinion specific to the two issues, i.e., degree of disability and probable duration of the degree of disablement.

3. We have carefully perused the proceedings and opinion given by the Medical Board as well as the original Release Medical Board, dated 26.09.1989. The respondents, in the original Release Medical Board had found the applicant to be suffering from 'hypothyroidism (244 V 67)' and the degree of disablement was noted at 20% for two years and the Board opined that the disease is a constitutional disorder unrelated to service. The PCDA had reduced the disability to less than 20%.

4. Now, the Re-Survey Medical Board convened on the directions of this Tribunal has opined that the applicant continues to suffer from euthyroid with

replacement therapy. The replacement therapy is lifelong and opined that the said disability is less than 20% for life.

5. Admittedly, the disability pension can be granted only if the disease is attributable to or aggravated by military service. The original Release Medical Board had opined that the disease is constitutional in nature unrelated to military service. On the other hand, the counsel for the applicant would state that 'hypothyroidism' cannot only be constitutional and there are several reasons for the onset of the disease on young men. The counsel for the applicant would claim that the Himalayan belt is rampant with iodine deficiency and the applicant had served in several field areas including J & K, Sikkim and Tripura, which are known to be endemic for iodine deficiency. He would state that 'hypothyroidism' is normally associated in the age group of 40 – 50 years but the fact that the applicant had got it early is solely due to his service in hard field areas and counter-insurgency areas such as J & K, Tripura, high altitude areas such as Sikkim. In his arguments, he would also quote para 38 of "Amendment to Chapter VI & VII – Guide to Medical Officers (Military Pensions), 2008" which would state that the attributability can be conceded when persons serving in endemic areas with iodine deficiency.

6. Per contra, the respondents would state that the onset of the disease 'was in 1985 in peace station in Hyderabad and, therefore, 'hypothyroidism' cannot be considered as attributable to military service.

7. For a better understanding, para 38 of the "Amendment to Chapter VI & VII – Guide to Medical Officers (Military Pensions), 2008" is extracted below:

"1 – 37

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38. **Goitre:** *Goitre are swellings of thyroid which can be broadly divided into simple goiter and toxic goitre.*

Simple goitre can be a diffuse or multinodular enlargement of the thyroid. It is likely that sub optimal dietary iodine intake associated with dietary compulsions and employment in localities peculiar to Armed Forces may lead to development of goitre which may present either in euthyroid and hypothyroid state. Sometimes hypothyroid state may develop as an aftermath to ablation of gland to over generous surgery or irradiation and also drug therapy like PAS, lithium carbonate and phenylbutazone. Attributability can be conceded in simple and multi nodular goitre due to iodine deficiency in endemic areas and in hypothyroidism following therapeutic trials.

Toxic goiters are commonly seen in Grave's disease and less commonly in multinodular goitre, sub-acute Dequervain's thyroiditis and adenoma thyroid showing features of toxicity. At times, hyperthyroid state may follow therapeutic and diagnostic trial with iodine compounds like anti-arrhythmic drug e.g., amiodarone, radiographic contrast media and during the course of iodine prophylaxis programme. Grave's disease is an immunologically mediated disease and it's onset or course can be aggravated by service conditions such as worry, stress and strain, shock which can precipitate the toxic symptoms. It will be appropriate to concede attributability in hyperthyroidism associated with multinodular goitre and sub-acute thyroiditis and also in post therapeutic and diagnostic trials of iodine and its compounds."

8. From the records produced before us by the respondents as well as the Release Medical Board proceedings, we note that the applicant had served in J & K from 15 August 1977 to 20 June 1980, in Sikkim from 15 January 1980 to 13 September 1980 and from October 1982 to July 1984 in Tripura, which are all field / high-altitude areas in the Himalayan belt and known to be endemic iodine deficiency areas. The applicant reported to Artillery Centre, Hyderabad in July 1984 and in 1985, he had complained of sweating in his palms and feet and on clinical diagnosis, he was classified as a case of 'hypothyroidism' and was put on replacement drugs. At that time, he was approximately 31 years of age.

9. It is not disputed that when the applicant joined the military service, he did not have any ailments and, therefore, any disease that occurs during his service period is normally attributed to the military service. The Apex Court, in

its judgment in the case of Dharamvir Singh vs Union of India and others and also in the case of Sukhvinder Singh versus Union of India and others have held that a disease that occurs during a person's service period is normally attributed to military service unless the medical definition dictates otherwise. It is well established that the applicant had 11 years service, when he was detected with the said disease in 1985.

10. Considering the above facts and the provisions of para 38 which clearly states that 'Attributability' can be conceded in simple and multi nodular goitre due to iodine deficiency in endemic areas and in hypothyroidism following therapeutic trials", the Medical Board ought to have considered the aggravation as defined in the "Amendment to Chapter VI & VII – Guide to Medical Officers (Military Pensions), 2008."

11. The Apex Court had, on several occasions, has said that even though primacy should be given to medical opinion; however medical opinion need not be worshipped when there is a clear misapplication of mind while giving its opinion regarding attributability or aggravation by the Medical Board. In the instant case, the applicant was found medically fit in all respects at the time of joining service. It is an established fact that he had served in endemic areas with iodine deficiency, i.e., in J & K, Sikkim and Tripura, prior to the onset of the disease. Further, at 31 years of age,, he was relatively young and had 11 years service when the disease was discovered, whereas it is known that the said disease normally occurs in the middle age, i.e., 40 to 50 years. Considering the service conditions prior to / at the time of occurrence of the disease and provisions of para 38 of Amendment to Chapter VI and VII – Guide to Medical Officers (Military Pensions) 2008, "Attributability to Military Service" ought to have been conceded. In view of the foregoing, we are inclined to agree with

the learned counsel for the applicant that the Medical Board had erred in opining that the said disease was not attributable to Military Service.

12. We observe that in the Release Medical Board proceedings, at the time of the applicant's discharge from service, the Medical Board had opined that the degree of disability and probable duration of the disease was arrived at 20% for two years. However, the PCDA had altered this to be less than 20%.

13. It is a settled law that the opinion of the Medical Boards containing panel of expert doctors should be given primacy and credence. Several judgments have examined and held that the scope of power of PCDA (P) is very limited. In summarizing the role of PCDA (P) with regard to disability pensions, Delhi High Court in the case of *Rajender Singh vs Union of India & Ors* on 27 July 2006 held that PCDA (P) is vested with no jurisdiction of its own..... . The operative part of the judgment is reproduced below:

*"7. In the judgment of the Division Bench of this Court in Ex Const.Jasbir Singh, reference was made to another Division Bench judgment of this Court in the case of Ex.Signalman Sri Bhagwan. In the judgment of the Court in Sri Bhagwan's case the consistent view taken by the Court is that the jurisdiction of the PCDA (P) is a very limited one and at best it can refer back the case to the competent authority for replying to the queries, if any, raised by the pension authorities that too in accordance with rules but it certainly has no jurisdiction to take a view contrary to the view of the Medical Board. Arbitrary non-acceptance of view of the Medical Board would be in violation to the rules as well as the principles of law stated by the Courts. In all the above cases, the Courts have dealt with the provisions entitling the member of the Armed Forces to receive disability pension. There is no divergence of view in regard to ambit and scope of power of PCDA (P) and binding nature of the opinion of the Medical Board constituted in accordance with rules. Regulation 173 of the Pension Regulations for Army, 1961 Appendix II relates to grant of entitlement for disability pension. Section 22 of the Army Act and the instructions issued by the competent authorities as afore-referred, leave no doubt that PCDA (P) is vested with no jurisdiction of its own..... Once the rules required the authorities to perform acts in a particular manner then it is expected that they would be done as required. *Acti qualibet it suavia*. In other words, things should take the prescribed course and the*

prescribed procedure should not be permitted to be frustrated particularly by arbitrary exercise of power. In the case of S.Balachandran Nair, the Supreme Court has clearly stated the nature and effectiveness of a medical opinion expressed by the appropriate Board in accordance with rules. Once the PCDA(P) transgresses its specified jurisdiction, their action would invite judicial intervention. [Emphasis supplied by us]

14. In view of the foregoing, we deem that at the time of release from service, the said disability of the applicant was 20% for 2 years. In the Re-Survey Medical Board constituted consequent to the order of this Tribunal, the Medical Board had opined that *"It is euthyroid with replacement therapy. Replacement therapy is life long."* The Medical Board had opined that the applicant's disability since the previous Medical Board continues to be "static". However, while assessing the degree of disability, the Medical Board had opined it at less than 20% for life. In the case of M.Natarajan vs UoI in OA No.148 of 2013, this Bench held that when the medical condition is "static", i.e., there is no change or no improvement in the said medical condition from the previous Medical Board, the Re-Survey Medical Board cannot reduce the degree of disability without assigning reasons for the same. The facts of the instant case fit squarely as that of the above case. It appears that the Re-Survey Medical Board was influenced by the opinion of the Pension Sanctioning Authority, i.e., PCDA(P) in reducing of the degree of disability from the assessment of the Release Medical Board, to less than 20% now, which we have already observed, is not sustainable before law.

15. In view of the foregoing, we find that the applicant continues to suffer ID "Hypothyroidism" with degree of disability at 20% for life long. Further, the said ID, "Hypothyroidism" suffered by the applicant is attributable to military service, in accordance with provisions of Para 38 of "Amendment to Chapter VI and VII – Guide to Medical Officers (Military Pensions) 2008". Since the

applicant has been invalided out of service he is also eligible for broad banding of the disability from 20% to 50% in accordance with the provision of para 7.2 of Ministry of Defence letter dated 31.01.2001.

16. In fine, the applicant is entitled to disability element of pension of 50% for life for the ID "Hypothyroidism" with effect from three years prior to the date of filing of this OA, i.e., 14 March 2011. Necessary corrigendum to the PPO shall be issued to that effect and the arrears shall be paid within three months from the date of this order, or else, 9% interest shall be paid by respondents on the arrears from that date. Accordingly, the application is ordered to that extent. No order as to costs.

Sd/-

Sd/-

Lt Gen K Surendra Nath
Member (Administrative)

Justice V.Periya Karuppiah
Member (Judicial)

04.08.2015
[True copy]

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

NB to Registry: The order passed by us on OA 59 of 2014, dated 20.01.2015, shall be attached with this order.

Lt Gen K Surendra Nath
Member (Administrative)

Justice V Periya Karuppiah
Member (Judicial)

To

1. Secretary to Government
Ministry of Defence, New Delhi – 110 011
2. The Chief of Army Staff
Army Headquarters, New Delhi – 110 011
3. The Chief Controller of Defence Account (Pension)
Allahabad
4. Director General of Artillery (Arty 3)
General Staff Branch, Army Headquarters
DHQ PO, New Delhi – 110 011
5. Record Officer
Topkhana Abhilaka, Artillery Record
Nasik Road Camp
6. The Commandant
Military Hospital, Chennai
7. M/s R.Veeramani and N.Easwaran
Counsel for applicant
8. Mr.N.Ramesh, ACGSC
For respondents
9. OiC, Legal Cell,
ATNK & K Area,
Chennai-600009.
10. Library, AFT, RB, Chennai.

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

and

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

O.A.No.59 of 2014

Dated : 04.08.2015

