

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No. 40 of 2014

Tuesday, the 23rd day of December 2014

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

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Ex LAC Gaddam Raja Ravi Kumar
(Service No.773398 G),
S/o Late Sh. Gaddam Chokkaiah
aged 36 years
R/o Gorregundam-Vill, Maddutla-Post
Karimnagar (AP), Pin-505452.

..Applicant

By Legal Practitioner:
Ms. Tonifia Miranda

vs.

1. Union of India,
Rep. by its Secretary
Ministry of Defence,
New Delhi-11.

2. Officer In Charge,
Directorate of Air Veterans
Subroto Park, New Delhi-110 010.

3. Air Force Record Office
Subroto Park, New Delhi-110 010.

4. The Commanding Officer
44 ED AFC/O, Air Force Academy
Dundigul, Hyderabad-13.

5. Dept of Sainik Welfare
Directorate of Sainik Welfare
MJ Road, Nampally, Hyderabad.

6. The Principal Controller of
Defence Accounts
Office of PCDA (Pensions),
Pin 271 014.

..Respondents

By Mr. E. Arasu, CGSC

ORDER

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

1. This applicant has filed this application for the reliefs to direct the respondents to produce all the medical records and Medical Board proceedings regarding the applicant and the IMB dated 26.12.2002; to direct the respondents to grant disability pension from the date of invalidation, i.e., 01.02.2003 till this date along with interest @ 9% p.a. for the arrears; to consider the disability of the applicant for the benefit of rounding off as per letter dated 31.01.2001 and for granting Ex-Servicemen status and to give him the benefits of Ex-Servicemen and rehabilitate the applicant in any employment scheme allotted to Ex-servicemen.

2. The factual matrix of the case of the applicant would be as follows:

The applicant would submit that he was recruited in the Indian Air Force as Equipment Assistant on 06.02.1997. His tenure was an unblemished one. He was diagnosed with the disability, "Schizophrenia ICD 295 F-20" and was invalided out of service on 01.02.2003 and discharged on 29.01.2003 from hospital. The applicant was hale and healthy while joining the Air Force and he contracted the above disability due to the stress and strain in the Air Force. As a result, he was placed in permanent Low Medical Category "EEE" and was invalided out of service. When he was handed over to his mother by the escorts, it was a rude shock to his parents. The applicant still suffers from the disease and now also he is under the consultation and medication of one Dr.P.Kishan, Psychiatrist, Prashanthi Hospital, Karimnagar, Andhra Pradesh. The applicant was not given any pension, medical facilities or financial assistance for his living and sustenance. Since he was unable to take any job and was without pension, his disease aggravated and he became a burden to his family members. The applicant does some menial works on and off and for two years he worked as a security guard in Peddappelt and Metpally BSNL office under contract. The applicant made representations to the authorities to consider his plea for grant of disability pension. In the year 2013, he had approached Ex-Servicemen Welfare Board for

financial assistance for medical treatment and it was also considered by the respondents. The applicant submits that due to his mental state, he was unable to explain as to whether he had received the rejection order of Appeal dated 07.10.2004. The applicant could not also approach the High Court of Andhra Pradesh for redressal of his grievances since his health condition was not stable and he was under the care of his relatives. On coming to know about the advent of this Tribunal and its judgments, the applicant has come before this Tribunal.

3. The respondents filed reply-statement which would be as follows:

The facts that the applicant's disability was diagnosed as a case of Schizophrenia, that he was recommended to be placed in low medical category CEE (T-24) *vide* AFMSF-15 dated 11th August 2000 and on subsequent review, he was placed in Low Medical Category CEE (Permanent) *vide* AFMSF-0 15, dated 09 October 2001 are not disputed by the respondents. However, the respondents submit that the applicant's condition was improved somewhat and stabilized after taking neuroleptics with clozapine medicines and presently no active psychotic features are present but a defect state persists. The respondents submit that keeping in view the psychotic nature of the illness, the multiple relapse within a short period even after suitable medication and prominent residual features, the applicant was considered unfit for

further military service and hence recommended for invalidment from service in medical category S5 SHAPE factors. Accordingly, the Invaliding Medical Board (IMB) held at MH Secunderabad vide AFMSF-16 dated 26.12.2002 considered his disability "Schizophrenia" as neither attributable to nor aggravated by military service. The percentage of disablement was assessed at 50% for five years. The findings of IMB was approved on 16.01.2003 by DDMS (MB), Air HQ RKPuram, New Delhi. The respondents submit that some diseases are undetectable by physical examination at the time of enrolment, unless adequate history is given by the candidates, regarding any diseases, e.g., gastric and duodenal ulcers, epilepsy, mental disorder and HIV infection. The onset of disability "Schizophrenia" was in peace station (Hyderabad) where there was no close time association with stress and strain of field/CI Ops/HAA/Afloat service as per Para 54 of Chapter VI of Guide to Medical Officers (Military Pensions) 2002. As per IMB, the applicant's disability was a constitutional disorder and not connected with military service. He was safely handed over to his parents considering his health condition. It has not been established beyond doubt that the applicant contracted his diseases wholly due to military service rendered by him. The respondents submit that the applicant's disability, "Schizophrenia" was declared as neither attributable to nor aggravated by military service vide IMB dated 26.12.2002 and therefore, the assessment

mentioned in the IMB as 50% for five years does not qualify for any disability pension. Therefore, the respondents request that this application may be dismissed as devoid of merit.

4. When this Original Application came up before us on 08.08.2014, on hearing the submissions on either side, we found it appropriate to pass an order directing the respondents to convene a Review Medical Board within a period of two months from the date of order at MH Secunderabad for the purpose of ascertaining the degree of disability, "Schizophrenia" and to file a report on the reference within a period of two months. Accordingly, Review Medical Board was constituted and the applicant was examined by the Medical Board and it had assessed the degree of disability and submitted its report.

5. We have carefully perused the proceedings and the opinion given by the Medical Board.

6. On the above pleadings and on the perusal of the proceedings and opinion of the Review Medical Board, we find the following points to be decided in this case.

(1) *Whether the rejection of disability pension to the applicant by PCDA, Allahabad is liable to be set aside?*

(2) Whether the applicant is entitled for grant of disability pension from 01.02.2003, the date of invalidation as prayed for?

(3) If so, whether the disability of the applicant be rounded off to the benefit of the applicant as per the letter of Government of India dated 21.01.2001?

(4) To what relief the applicant is entitled for?

7. **Point Nos.1 to 3:** The facts that the applicant was recruited in the Indian Air Force as Equipment Assistant on 06.02.1997, that while he was serving in the Air Force, he was admitted in Military Hospital, Secunderabad on 19.09.2002 for being treated for the disease, "Schizophrenia", that he was discharged from thereon on 29.01.2003, that thereafter an Invaliding Medical Board was convened and on its opinion the applicant was placed in Permanent Low Medical category, that he was invalided out from service with effect from 01.02.2003 and that the applicant was taken by escorts for being handed over to his NoK, have not been disputed. The Invaliding Medical Board proceedings produced by the respondents would go to show that the Invaliding Disease "Schizophrenia" had firstly affected the applicant on 29.3.2000 at Secunderabad where he was serving. The documents produced by the respondents and the opinion given by the Invaliding Medical Board held on 26.12.2002 would show that prior to the

enrolment of the applicant, he was not having such a disease. The opinion of classified Psychiatric Specialist does not speak about any family history or the defect on the part of the applicant for the onset of such a disease. Despite the opinion given by the Medical Board that the applicant was not having any history of the disease prior to his service, it is strange to understand, how the opinion that it is not attributable to or aggravated by military service has been arrived at.

8. The learned counsel for the applicant would submit in her argument that the Invaliding Medical Board ought to have given its opinion with regard to the non-attributability or non-aggravability according to the judgment of Hon'ble Apex Court reported in **(2013) 7 SCC 316** in between **Dharamvir Singh** and **UOI & Ors.** Relying upon the judgment, she would further submit that the Entitlement Rules for Casualty Pensionary Awards, 1982, Appendix-II (Regulation 173) have not been strictly followed by the Invaliding Medical Board and therefore, a presumption shall be drawn to the effect that the deterioration of health of the applicant took place during military service and it should be due to the service conditions, as per Rule 5 read with Rule 14(b) of the Entitlement Rules. She would also submit that the said presumption to be drawn regarding attributability or aggravability of the ID 'Schizophrenia' in favour of the applicant was not dispelled by the respondents by showing that invaliding disease

was a hereditary one or the applicant was having such instances prior to his service.

9. In consideration of the arguments advanced by the learned counsel for the applicant when we approach the facts and circumstances of the case, we could find that the opinion of the Invaliding Medical Board has not shown anywhere about the hereditary nature of the disease or the applicant was having the incidents of such disease prior to his service. In the judgment of the Hon'ble Apex Court rendered in **Dharamvir Singh vs. UOI & Ors.**, it has been clearly laid down as follows:

" 28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from 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. The question whether a disability is attributable to or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration

in his health is to be presumed due to service. (Rule 5 r/w Rule 14(b)).

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9). "

10. The guidelines as extracted above would certainly give strength to the arguments of the learned counsel for the applicant. Furthermore, the Hon'ble Apex Court in a recent judgment made in **Civil Appeal No.5140 of 2011** between **K. Srinivasa Reddy** and **Union of India and Others** observed as follows:

"A careful reading of the above would show that even if the disease was triggered in the circumstance set out by the respondents in the passage extracted above it could not be said to be wholly unconnected to military service. The Medical Board in our opinion failed to keep the circumstances which appear to have triggered the disease in mind while holding that the disease was not attributable nor aggravated by the military service. "

In the aforesaid judgement, it has been referred about the case of **Veer Pal Singh vs. Secretary, Ministry of Defence reported in 2013 (8) SCC 83** wherein the following *ratio decidendi* has been laid down.

" We may also before parting refer to a three Judge Bench decision of this Court in Veer Pal Singh vs. Secretary, Ministry of defence (2013 8 SCC 83 where this Court was dealing with the question whether Schizophrenia could be attributed to military service and whether the opinion of the Medical Board that a disease was not attributable or aggravated by such service could be blindly accepted by the Tribunal. This Court has by reference to medical literature including dictionaries relevant to the disease held that the opinion of the medical board deserved respect but need not always be worshipped. "

11. In the aforesaid observations, we find that the Invaliding Medical Board has categorically failed to give reasons for this opinion that it is not attributable to or aggravated by military service. Therefore, we are of the considered view that the presumption of attributability or aggravability has not been dispelled by the respondents through quoting cogent reasons from the opinion of the Invaliding Medical Board and therefore, it ought to have been

considered that the applicant was affected by the Invaliding Disease 'Schizophrenia' due to military service. In the aforesaid judgment of the Hon'ble Apex Court made in the case of **K. Srinivas Reddy vs. Union of India and others (Civil Appeal No.5140 of 2011, dated 09.10.2014)**, the Invaliding Disease was also "Schizophrenia" in which the refusal of grant of disability pension was reversed by the Hon'ble Apex Court under the similar circumstances of the present case. Therefore, we find that the refusal to grant disability pension as asked for by the applicant by PCDA and the competent authority in the First Appeal preferred are not sustainable and therefore, they are liable to be quashed. In the said circumstances, the Invaliding Disease, viz., "Schizophrenia" be considered as attributable to or aggravated by military service, and the applicant ought to have been given disability pension by the respondents.

12. The quantum of disability assessed by the Invaliding Medical Board was 50% for a period of five years. Since the said duration was over by 2007, the disability of the applicant cannot be considered as extended further. There was no Review Medical Board convened by the respondents even after the lapse of five years period as mentioned in Invaliding Medical Board proceedings. This had made us to order for constitution of a Review Medical Board to assess the quantum of disability, if any, and to fix the probable duration of the disability. It

was promptly constituted and the applicant was examined for the assessment of degree of disability suffered by him and the duration of disability. Accordingly, an opinion has been presented by the Review Medical Board stating that the disability of the applicant was assessed at 50% for life. We could therefore see that the said degree of disability would have continued from the date of Invaliding Medical Board till today and it will remain throughout the life of the applicant. Therefore, the applicant is entitled to a disability pension for the Invaliding Disease "Schizophrenia" at 50% for life.

13. The learned counsel for the applicant would submit that the disability of the applicant assessed by the Review Medical Board should have been broad banded as per the letter of the Government of India dated 31.01.2001 since the applicant was invalided out on 01.02.2003 on the provisions of the said letter are applicable in the case of the applicant. As per category "B" of Para 4(1) of the letter, we could see that the disability of the applicant is entitled for broad banding. The appropriate paragraph regarding the broad banding of disability is given under Para 7.2. Para 7.2 runs as follows:

7.2. Where Armed Force personnel is invalided out under circumstances mentioned in para 4.1 above, the extent of disability or functional incapacity shall be determined in the following manner for the purposes of computing the disability element:-

<i>Percentage of disability as assessed by invaliding medical board</i>	<i>Percentage to be reckoned for computing of disability element.</i>
<i>Less than 50</i>	<i>50</i>
<i>Between 50 and 75</i>	<i>75</i>
<i>Between 76 and 100</i>	<i>100</i>

14. As per the above reference as to the percentage of disability in between 50% and 75%, the percentage to be reckoned for computing of disability element should be 75%. Therefore, we are of the considered opinion that the applicant is eligible for payment of disability pension at 75% for life as per rules, after broadbanding from 50%.

15. While admitting this application, we condoned the delay of 3058 days in preferring the claim of the applicant. The application filed in M.A.No.65 of 2014 to condone the delay was allowed by us on condition that the applicant will be entitled to the payment of disability pension for three years prior to the date of filing of the application as per the principles laid down by the Apex Court in the case of **Tarsem Singh vs. Union of India** reported in **(2008) 8 SCC 648**. The application was presented before the Tribunal by the applicant on 16.09.2013. The applicant is therefore found entitled to the payment of disability pension as decided with effect from 16.09.2010, i.e., three (3) years prior to the date of filing of the Original Application. Accordingly, all the three points are decided in favour of the applicant.

16. **Issue No.4:** In view of our findings reached in the above points, the application filed by the applicant is entitled for payment of disability pension at 75% with effect from 16.09.2010 as per Pension Rules. The respondents are therefore, directed to pay the arrears of disability pension accrued from the aforesaid date and also to issue PPO to that effect within a period of three months from today along with all other consequential benefits accrued to a pensioner. In default, the applicant is entitled for interest at 9% per annum on the arrears till the date of realization.

17. In fine, the application is allowed as indicated above. No order as to costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

23.12.2014
(True copy)

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

Internet : Yes/No
Internet : Yes/No

Note to Registry: The order passed by us in O.A.No40 of 2014, dt: 08.08.2014 shall be attached with this order.

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No. 40 of 2014

Friday, the 8th day of August 2014

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

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Ex LAC Gaddam Raja Ravi Kumar
(Service No.773398 G)
S/o Late Sh. Gaddam Chokkaiah
Hindu, aged 36 years
R/o Gorregundam-Vill,Maddutla-Post
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..Applicant

By Legal Practitioner:
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1. Union of India
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6. The Principal Controller of

Defence Accounts
Office of PCDA (Pensions)
Pin 271 014.

..Respondents

By JWO M. Tiwari, Legal Cell
Air Force.

ORDER

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

2. This application is filed by the applicant for the reliefs to direct the respondents to produce all the medical records and medical board proceedings regarding the applicant and the IMB dated 26.12.2002; to direct the respondents to grant disability pension from the date of invalidation, i.e., 01.02.2003 till this date along with interest @ 9% p.a. for the arrears; to consider the disability of the applicant for the benefit of rounding off as per letter dated 31.01.2001 and for granting Ex-Servicemen status and give him the benefits of Ex-Serviceman and rehabilitate the applicant in any employment scheme allotted to Ex-Servicemen.

2. The application in M.A.No.65 of 2014 filed by the applicant seeking condonation of delay of 3058 days was ordered on 17.06.2014 on condition that the applicant even though asked for payment of disability pension from 01.02.2003, the said claim was restricted to three years prior to the date of filing of Original Application, provided the claim is allowable.

3. We heard Ms. Tonifia Miranda, learned counsel for the applicant and JWO M.Tiwari, Legal Cell, Air Force, representing the respondents.

4. On a careful perusal of the pleadings submitted and the arguments advanced before us, we find that the applicant was recruited in the Indian Air Force as Equipment Assistant on 06.02.1997 and was invalided out of service on 01st February 2003. The applicant was admitted into Military Hospital, Secunderabad on 19.09.2002 and was discharged on 29.01.2003. Diagnosing his disease SCHIZOPHRENIA ICD 295 F-20, he was invalided out of service. The applicant was hale and healthy and that due to stress and strain in the Air Force, he was placed in permanent Low Medical Category "EEE" and was recommended disability element, that due to his disability, he was unable to take up any job. He made representation to consider his plea for grant of disability pension but it went in vain. Therefore, he is before this Tribunal.

5. It was diagnosed by the Psychiatrist Specialist that the applicant's disease was "Schizophrenia" and he was temporarily recommended to be placed in low medical category CEE (T-24), vide AFMSF-15 dated 11th August 2000 and that subsequently he was placed permanently in low medical category CEE (P) vide AFMSF -0 15 dated 9th October 2001. The Psychiatric observation brought out neglect of self-care, constricted affect, poverty of ideas, auditory hallucinations, ideas of reference, persecutory delusions, intrinsic depressive cognitions, variability of biorhythms and lack of insight and judgment even after some treatment with an increased neuroleptic dosages and that his conditions was improved somewhat and stabilized after substituting neuroleptics with clozapine. The respondents would also submit that no active psychotic features are present but a defect state persists and

that keeping in view the psychotic nature of the illness, the applicant was considered unfit for further military service.

6. On a careful perusal, we find that his Invalidment Medical Board was held at MH Secunderabad vide AFMSF-16 dated 26th December 2002 and that the IMB considered his disability, "Schizophrenia" as neither attributable to nor aggravated by service and the duration of the disability was for 5 years only. The present application is filed in the year 2014 after a long gap of 12 years. In the said circumstances, we are not in a position to conclude whether the applicant is still suffering from the said disability or not so as to grant a relief as claimed by the applicant if at all found entitled. The attributability or the aggravability to the disabilities cannot be gone into at this stage since the original Medical Board gave its opinion at the time of examining the individual for the disability in the year 2002. Whether the opinion given by the then Medical Board can be considered or not depends on the circumstances prevailed then.

7. In order to find out the present degree of both the disabilities of the applicant, we are necessarily to direct the respondents to convene a Review Medical Board and to file its report. Both the parties will be benefited by convening of such Review Medical Board which would enlighten the Court to come to a correct conclusion. Therefore, the Original Application could be disposed of only after the receipt of the report of the Review Medical Board on the examination of the applicant.

8. Accordingly, we direct the respondents to convene a Review Medical Board at MH Secunderabad for the purpose of ascertaining the degree of disability, "Schizophrenia" on the applicant and its probable duration and to file a report before us. The said Review Medical Board shall be convened by the respondents within a period of two months from today and sufficient notice shall be issued or intimation be given to the applicant to appear before the Review Medical Board for being examined towards the aforesaid purpose without fail. The Review Medical Board is also directed to file its report on the reference within a period of two months which is not later than 17.10.2014. Hence, post the case on 17.10.2014 for filing Review Medical Board Proceedings with its opinion.

Sd/

LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/

JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

08.08.2014

(True copy)

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

VS

To:

1. The Secretary
Ministry of Defence, New Delhi-11.
2. Officer In Charge
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Subroto Park, New Delhi-110 010.
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Pin 271 014.
7. Ms. Tonifia Miranda
Counsel for applicant
8. Mr. E. Arasu, CGSC
For Respondents.
9. OIC, Air Force, Legal Cell, Chennai.
10. Library, AFT/RBC

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

O.A.No.40 of 2014

Dt: 23.12.2014