

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.152 of 2013

Wednesday, the 15th day of January 2014

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

AND

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

Rank-Ex-Subedar, Name-L.Rajiah
Service No.Ex-JC 692657-M
S/o Late M.Lourdu Samy
Aged about 53 years
Door No.7/1229, EB Colony
Nagamalai (Post)
District-Madurai, Tamil Nadu
Pin-625 019.

.. Applicant

By Legal Practitioner:
M/s. M.K. Sikdar
and S.Biju

vs.

1. The Additional Director General of
Personnel Services
Adjutant General's Branch
Integrated HQ of MOD (Army)
DHQ-PO, New Delhi-110 011.

2. The Officer-in-Charge
Army Medical Corps Records
Pin-900 450
C/o-56 APO

3. The President
Release Medical Board
Military Hospital, Golconda
Hyderabad-500 008.

.. Respondents

By Mr. B. Shanthakumar, SPC

ORDER

(Order of the Tribunal made by
Hon'ble Lt Gen Anand Mohan Verma,
Member-Administrative)

1. This application has been filed seeking the following reliefs:
 - a) Quashing of opinion of the Release Medical Board, order of Army Medical Corps Records vide No.C/JC 692657 M/DP(I), dated 12th August 2011 and order of ADG Personnel Services, Adjutant General's Branch vide No.B/40502/975/11/AG/PS-4, dated 17th August 2012;
 - b) To declare the disability as aggravated by military service and direct the respondents to grant 20% disability pension (rounded off to 50%) for life along with interest, costs and with all consequential monetary benefits;
 - c) To pass such further or other orders as this Tribunal may deem fit.
2. The facts of the case are that the petitioner was enrolled as Soldier (Pharmacist) on 17th August 1983 and after serving 28 years and 15 days, he was discharged in the rank of Subedar on 1st September 2011. He is in receipt of service pension. He was found to be suffering from a disease called "CHOROIDAL NEO-VASCULAR MEMBRANE LT EYE" on 21st July 2008 and was placed in Low Medical Category S1H1A1P1E3 (T-24) with effect from 11th August 2008.

The Categorization Medical Board in August 2008 held that the disease was aggravated by stress and strain of military service. The Re-categorization Medical Board held on 6th February 2009 too placed him in medical category S1H1A1P1E3, assessed the disability of the petitioner as 30% and on attributability/aggravation agreed with the Categorisation Board held in August 2008. At the time of the retirement of the petitioner, Release Medical Board was held in March 2011 and his disability was assessed as 15 to 19% and the Board opined that the disability was neither attributable to nor aggravated by service. The Release Medical Board also held that the disability qualifying for disability pension was Nil for life. Consequently, disability pension was not granted to the petitioner. He filed First Appeal dated 24th September 2011 which was replied by the respondents vide their letter dated 17th August 2012 in which the respondents held that the RMB had appropriately held the disability as neither attributable to nor aggravated by military service. The petitioner filed his Second Appeal dated 16th November 2012. No reply was received by the petitioner.

3. The petitioner through his application and pleadings of the learned counsel for the petitioner Mr. M.K. Sikdar would state that he was enrolled after vigorous physical test and meticulous medical examination. At the time of joining the army, he was not suffering from any ailment and there is no history of any constitutional disease in his family. He was found fit in every mandatory annual medical

examination till 2006. The petitioner reported eye problem which was diagnosed as "CHOROIDAL NEO-VASCULAR MEMBRANE LT EYE" due to stress and strain of military service. There is a scar in the left eye of the petitioner and the cornea was completely blocked and the same was noticed when the petitioner's spectacles broke in 2007 at MH Bhopal. The petitioner would claim that he had reported sick to the Eye Specialist who gave him wrong treatment and the disease was further aggravated. He was also referred to Sankara Nethralaya, Chennai and he was treated for a long time, but the disease was not cured and the petitioner is suffering from the said eye disease till date. He was medically categorised as S1H1A1P1E3 on 11th August 2008 and again on 06 February 2009. In both cases, the Categorization Medical Board had opined that the disease was aggravated by military service. However, the Release Medical Board held in March 2011 assessed the disability to be less than 20% and the disease was neither attributable nor aggravated by military service. The petitioner's Second Appeal has still not been responded to by the respondents. The learned counsel for the petitioner would state that there are some discrepancies in the Release Medical Board Proceedings. He would claim that the photo copy of the extracts of the Release Medical Board Proceedings held by the petitioner and produced as material documents with the O.A. states that the percentage of the disability is 20% whereas the copy of the Release Medical Board Proceedings produced by the respondents indicates

the disease to be 15 to 19% and the disability qualifying for disability pension has been stated to be 'Nil' for life long. He would also point out that there are differences in the signatures of the members of the Medical Board. Alleging that the respondents have deliberately manipulated the Release Medical Board Proceedings in order to deny the disability pension to the petitioner, the learned counsel for the petitioner would plead that the impugned orders be quashed and the petitioner be granted disability pension of 20% rounded off to 50% for life.

4. In the counter-affidavit, the respondents would admit that the petitioner was enrolled on 17th August 1983 and his disability "CHOROIDAL NEO-VASCULAR MEMBRANE LT EYE" started with effect from 21st July 2008. They would also admit that the petitioner was placed in low medical category E3 on 11th August 2008. They would further state that the disability was viewed by the Release Medical Board as neither attributable to nor aggravated by military service and the disability was assessed to 15 to 19% and 'Nil' for life. The petitioner's application for re-consideration and First Appeal have been responded to and it was explained to him that the disability is neither attributable to nor aggravated by military service and therefore no disability pension is admissible. The Second Appeal filed by the petitioner is still under consideration and the petitioner has violated all service norms and precedence by filing this application. He should have waited for a response to his Second

Appeal. The respondents would state that the petitioner has been granted service pension of Rs.11970/- per month vide PPO dated 19th August 2011. They would plead that Section 173 of Pension Regulation for the Army 1961 stipulates that for grant of disability pension either the disability should be attributable to or aggravated by military service and should have been assessed at 20% or more. In the instant case, it is not so. On the issue of opinion of the Medical Board, the respondents would cite a case in **W.P.No.1071 of 1997, dated 23rd June 1999 (UOI & Ors. vs. Sreekumar, P)** rendered by a Division Bench of the High Court of Kerala at Ernakulam to say that the opinion of the Medical Board being the expert body cannot be interfered with unless it is palpably wrong. The respondents would produce the original copy of the Release Medical Board Proceedings held by HQ ATNK&K Area and AC Records and Captain Vaibhav Kumar, learned JAG Officer assisting the learned Senior Panel Counsel Mr. B.Shanthakumar would state that the photo copy of the Release Medical Board Proceedings produced by the petitioner is an unapproved one and is not valid. Under these facts and circumstances of the case, the respondents would pray that the application be dismissed being devoid of merit.

5. Heard both sides and perused the documents.

6. The only point for determination is whether or not the petitioner is entitled to disability pension?

7. In the Release Medical Board Proceedings produced by the petitioner, we find that the disability has been assessed as 20% whereas in the Original Release Medical Board Proceedings produced by the respondents, we find that the disability is assessed as 15% to 19% and the disability qualifying for disability pension with duration is 'Nil' for life long. In the Original Release Board Proceedings, we find that a piece of paper has been pasted in the lower portion of paragraph-6 and the opinion of the Medical Board has been printed on this piece of paper which has been signed by three members of the Medical Board. Also, we find that these Release Medical Board Proceedings have been approved by HQ ATNK and K Area on 29th April 2011. A close scrutiny of the original RMB proceedings reveals that there may be some difference in the signatures of one of the Board Members who has signed at two places in the proceedings. However, authenticity of the original Release Medical Board Proceedings is not under suspicion since the respondents produced the Release Medical Proceedings held in the files of Records of the AMC and HQ ATNK and K Area and the two are identical. The learned counsel for the petitioner was unable to produce the original of the documents from which a photo copy produced by him was obtained stating that the photo copy had been provided by the respondents. We find that the Release Medical Board Proceedings produced by the petitioner have not been approved. The learned counsel for the petitioner was unable to produce the source from which the photo

copy produced by him was made. It is possible that the photocopy produced by the petitioner is of a document which may have been in draft form and was not the approved RMB proceedings. Being from AMC, the petitioner may have obtained a photocopy of this draft. Thus, there does seem to be some discrepancies in the Release Medical Board Proceedings produced by both sides. However, the authenticity of the original RMB proceedings is undisputed.

8. Indisputable fact is that the petitioner's disability was stated to be aggravated by stress and strain of military service by two Medical Categorisation Boards held in 2008 and 2009 and the petitioner continued to be in low medical category at the time of his completion of term of engagement which necessitated the Release Medical Board to assess the disability in March 2011.

9. There are judgements of the Supreme Court and High Courts which hold that opinion of a Medical Board, which is a body of experts, should not be interfered with by Courts and Tribunals. Now, here we have opinions of three Medical Boards, two of which have opined that the disability of the petitioner was aggravated by stress and strain of military service and in one case the Re-categorisation Board assessed the disability as 30 %. Since there is a difference in opinions rendered by the three Medical Boards all being bodies of experts, we are inclined to go by the majority identical opinions of two Medical Categorization Boards and consider disability of the

petitioner to be aggravated by military service consequent to which he would be entitled to disability pension.

10. Now the question is percentage of disability which will determine the petitioner's disability pension. The Release Medical Board has assessed the disability to be 15 to 19% and have held that percentage of disability qualifying for disability pension is 'Nil'. Under the provisions of Government of India letter No.1(2)/97/I/D (Pen-C), dated 31st January, 2001, the disability of a petitioner which is less than 50% is to be broadbanded to 50%. The relevant portion of the Government of India letter reads as follows:

7.2. Where an Armed Forces 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>

Accordingly, the petitioner in the instant case would be entitled to 50% disability pension.

11. In fine, the application is allowed. The petitioner is granted 50% disability pension for life with effect from the date of his discharge from the army. This order to be implemented within three months from today. No order as to costs.

Sd/
LT GEN ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)

15.01.2014
(True copy)

Member (J) – Index : Yes / No

Internet : Yes / No

Member (A) – Index : Yes / No

Internet : Yes / No

Vs

To:

1. The Additional Director General of
Personnel Services
Adjutant General's Branch
Integrated HQ of MOD (Army)
DHQ-PO, New Delhi-110 011.

2. The Officer-in-Charge
Army Medical Corps Records
Pin-900 450
C/o-56 APO

3. The President
Release Medical Board
Military Hospital, Golconda
Hyderabad-500 008.

4. M/s. M.K. Sikar
and S.Biju
Counsel for petitioner

5. Mr. B. Shanthakumar, SPC
For Respondents.

6. OIC Legal Cell, ATNK & K Area
Chennai.

7. Library, AFT/RBC.

HON'BLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)
AND
HON'BLE LT GEN ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

O.A. No.152 of 2013

Dt: 15.01.2014