

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI  
CIRCUIT BENCH AT HYDERABAD**

**O.A.No. 152 of 2014**

Tuesday, the 19<sup>th</sup> day of January, 2016

The Honourable Justice S.S.Satheesachandran  
(Member-Judicial)

and

The Honourable Lt Gen K Surendra Nath  
(Member-Administrative)

(No 2555759) Ex L/Nk Mecheri (age 70 years)  
Chinna Kotta Palli Village & Pothanayanapalli PO  
Krishnagiri Taluk & District, Tamil Nadu

...Applicant

By Legal Practitioners:  
M/s S.P.Ilangovan and B.A.Thayalan

vs

1. Union of India  
Ministry of Defence, Rep. by  
The Defence Secretary, Ministry of Defence  
South Block, DHQ Post, New Delhi – 110 011
2. The Chief of the Army Staff  
Army Headquarters, Sena Bhavan, DHQ Post  
New Delhi – 110 011
3. Officer I/C, DSC Records, PIN 901277, C/o 56 APO
4. The PCDA (Pension)  
Draupathighat, Allahabad, UP – 211 014

... Respondents

Mr.V.Kadhirvelu, CGSC

**ORDER**

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

We have passed an order on this O.A. No.152 of 2014 on 27.07.2015 with directions to the respondents to constitute or convene a Re-Survey Medical Board for the purpose of assessing the claim of disability "Essential Hypertension (Primary)". The respondents were directed to place the said Re-Survey Medical Board proceedings by 29.10.2015. The respondents had convened the Re-Survey Medical Board at Command Hospital, Bangalore. The applicant was admitted and examined as directed by this Tribunal and the respondents have submitted their report with Re-Survey Medical Board proceedings and their opinion.

2. At the time of the applicant's discharge from service on 30.11.1990, the Release Medical Board had opined that the said disease "Essential Hypertension (Primary)" was aggravated by military service and had assessed the disability at 30% for 2 years. However, the PCDA (P) rejected the claim of the applicant for grant of disability pension on the plea that the said disease, i.e., "Essential Hypertension (Primary)" was neither attributable to nor aggravated by military service.

3. It is settled law that the opinion of the Medical Board should be given primacy and credence. It has been upheld in various judgments of the Hon'ble Apex Court including in the case of A.V.Damodaran, reported in (2009) 98 SCC 140.

4. As the Release Medical Board had assessed the disability at 30% for 2 years and the said two year period had expired in 30.11.1992 and no further Medical Board had been held, it was found necessary to ascertain the present condition of the applicant and hence the respondents were directed to convene a Re-Survey Medical Board.

5. We have carefully perused the proceedings and the opinion given by the Re-Survey Medical Board. We find the disability "Essential Hypertension (Primary)" was found to be further aggravated since the previous Medical Board. The Re-Survey Medical Board has opined as under:

*"A 70 yr old retired personnel released from service in the year 1990 with disability of Primary HTN presented reported for RSMB. Present review, showed progression in his primary disease with renal involvement (Sr Cr – 1.6 mg/dl) and retinopathy. During the interim period since his release he has developed Diabetes and CAD – P/CABG for which he was treated in private hospital. Hypertension is a risk factor for CAD. His present cardiac evaluation showed him to have severe LV dysfunction – requiring long term follow up."*

On the said reasons, the Medical experts have assessed the disability at 40% for life.

6. In view of the Hon'ble Apex Court's ruling that the opinion of the Medical Board should be given primacy and credence in awarding

disability pension and as the Re-Survey Medical Board has also opined that the applicant's disease has further aggravated since his discharge and is now assessed at 40% for life, we are inclined to award disability pension to the applicant.

7. In accordance with Para 7.2 of the Government of India MOD letter No.1 (2)/97/1/D (Pen-C) dated 31.01.2001, when an Armed Forces person is invalided out under circumstances as given in para 4.1 of the said order, they are entitled to broad-banding of disability element of pension. Since the applicant's invalidment falls within the above parameters, he is entitled to broad-banding of the said disability element from 40% to 50% for life.

8. As this case pertains to pension matter which is recurring / continuing cause of action and in view of the principles laid down by the Apex Court in the case of Union of India and Others v Tarsem Singh reported in (2008) 8 SCC 648, we had already decided that relief will be restricted to a period of three years prior to the date of filing of the Original Application. Therefore, the applicant is found entitled to the disability pension with effect from 3 years prior to the date of filing of the application, i.e., 28.10.2014, or, in other words, the applicant is entitled to reliefs with effect from 28.10.2011.

9. In sum, the application is allowed to the extent of granting disability pension to the applicant with effect from 28.10.2011 at 50% of disability for life, after broad-banding, as assessed by the Re-Survey Medical Board. The respondents are directed to issue PPO to that effect and pay the arrears of disability element of pension within a period of 3

months from today. Failing to comply, the applicant is entitled to the said arrears with interest at 9% *per annum* from this date till the date of realization. No order as to costs.

Sd/-

Sd/-

Lt Gen K Surendra Nath  
Member (Administrative)

Justice S.S.Satheesachandran  
Member (Judicial)

19.01.2016  
True copy

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

Internet : Yes/No  
Internet : Yes/No

***NB to Registry:****The order passed by us in OA 152/2014, dated 27 July 2015, shall be attached with this order.*

Lt Gen K Surendra Nath  
Member (Administrative)

Justice S.S.Satheesachandran  
Member (Judicial)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI**

**O.A.No. 152 of 2014**

**Monday, the 27<sup>th</sup> day of July, 2015**

The Honourable Justice V.Periya Karuppiah  
(Member-Judicial)

and

The Honourable Lt Gen K Surendra Nath  
(Member-Administrative)

(No 2555759) Ex L/Nk Mecheri (age 70 years)  
Chinna Kotta Palli Village & Pothanayanapalli PO  
Krishnagiri Taluk & District, Tamil Nadu

...Applicant

By Legal Practitioners:

M/s S.P.Ilangovan and B.A.Thayalan

vs

1. Union of India  
Ministry of Defence, Rep. by  
The Defence Secretary, Ministry of Defence  
South Block, DHQ Post, New Delhi – 110 011
2. The Chief of the Army Staff  
Army Headquarters, Sena Bhavan, DHQ Post  
New Delhi – 110 011
3. Officer I/C, DSC Records, PIN 901277, C/o 56 APO
4. The PCDA (Pension)  
Draupathighat, Allahabad, UP – 211 014

..Respondents

Mr.V.Kadhirvelu, CGSC

**ORDER**

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

This application has been filed by Ex L/Nk Mecheri seeking to quash the impugned order of the 3<sup>rd</sup> respondent dated 16.09.2014 and consequently grant him disability pension due to his invalidation from service, with effect from 30.11.1990.

2. Briefly, the applicant was enrolled in the Army on 18.03.1963 and took part in the 1965 and 1971 operations and on completion of his terms of engagement with the Army, he was discharged and transferred to Pension establishment on 30.11.1978 with service pension. Thereafter, he was re-employed in the DSC on 03.11.1979 and was invalided out of DSC on 30.11.1990 in low medical category BEE (Pmt) on account of the disease "Essential Hypertension (Primary)" after 11 years and 27 days of service in DSC. The Release Medical Board had held that the disease was aggravated by military service and his disability was assessed at 30% for 2 years. Even though the Release Medical Board had recommended grant of disability pension to him, the PCDA (P) rejected the claim for grant of disability pension on the plea that the said disease, i.e., "Essential Hypertension (Primary)" suffered by the applicant was neither attributable to nor aggravated by military service. The appeal against rejection of disability pension was also rejected by the Government *vide* their letter dated 17.03.1993.

The applicant would further state that he had recently undergone a major surgery for 'coronary artery disease and was diagnosed with several ailments, such as 'Diabetes Mellitus, 'Hypertension' and 'Myocardial infarction' which are connected to the disease 'Hypertension'. Thereafter, with the assistance of Madras High Court Legal Services Authority, he had served a legal notice on the 3<sup>rd</sup> respondent seeking disability pension. However, the same was rejected by the 3<sup>rd</sup> respondent *vide* communication dated 16.09.2014. Hence, the applicant has approached this Tribunal calling for the records and to grant him disability pension.

3. The respondents, in their reply statement, would not dispute the fact either of his enrolment in the Army, subsequent discharge from service on 30.11.1978 and the fact of his receiving service pension and that he was subsequently enrolled in DSC on 03.11.1979. Further, the respondents would state that after the applicant's initial terms of engagement, he was granted extension of service from 03.11.1989 to 02.11.1994. However, since he was placed in low medical category BEE (P) with effect from 30.10.1985, he was discharged from service with effect from 30.11.1990 under provisions of Army Rule 13 (3) (III) (1) after rendering 11 years and 2 days of qualifying service. Prior to his discharge, the applicant was brought before a duly constituted Release Medical Board which assessed his disability "Essential Hypertension (Primary)" as aggravated by Military Service with 30% disability for 2 years. However, his disability claim was rejected by the PCDA,



Allahabad in consultation with the Medical Advisor (P) attached with them, *vide* their letter dated 30.05.1991 by holding that his disability was neither attributable to nor aggravated by Military Service. His subsequent appeal against rejection of the disability pension was also rejected by the Government of India, Ministry of Defence, *vide* their letter dated 05.02.1993 stating that *"the onset of the applicant's disease was in peace area and there is no close time relationship with field service. There is no record of exceptional or unusually severe mental or physical stress due to service factors."* In view of the foregoing they would contend that the application be dismissed being devoid of merits.

4. We have heard the arguments of Mr.B.A.Thayalan, learned counsel for the applicant and Mr.V.Kadhirvelu, learned Central Government Standing Counsel, assisted by Major Suchithra Chellappan, learned JAG Officer (Army) appearing on behalf of respondents and perused all the documents placed before us.

5. While admitting the case, we had condoned the delay of 8547 days, subject to the condition that the relief claimed by the applicant, if allowed by the Tribunal, will be restricted to a period of three years prior to the date of filing of this Original Application in accordance with the principles laid down by the Hon'ble Apex Court in the case of *Uol vs Tarsem Singh* reported in (2008) 8 SCC 648.

6. The learned counsel for the applicant would state that several judgments of the Delhi High Court and Hon'ble Supreme Court have held that the opinion of the Medical Board ought to be given primacy for adjudicating disability. They have also held that the PCDA (P) does not have the authority to set aside the opinion of the Medical Board without either giving the applicant an opportunity for a fresh Medical Board. Further, the Hon'ble Supreme Court has held that in cases where disability pension was arbitrarily not granted in contravention of the opinion of the Medical Board, such opinion should be discounted and the applicant should be granted disability pension. Per contra, the respondents would state that *vide* Army Order 417/14, "*Medical Boards and military authorities do not decide case, they only express their opinions to assist the pension sanctioning authority. No case is to be considered either attributable to or aggravated by military service until it has been so decided by the Government of India or its delegated authority.*"

7. In the instant case, the applicant, after retirement from the Army was enrolled in the DSC and had served for a period of 10 years whereupon his services were extended by another 5 years from 03.11.1989 to 02.11.1994 . However, the applicant was discharged from service on medical grounds on 30.11.1990. At the time of discharge, the Release Medical Board had opined that the said disease "Essential Hypertension (Primary)" was aggravated by Military Service and assessed the disability at 30% for 2 years. Since the Medical Board

gave its opinion on 30.11.1990, the two year period had elapsed long ago, i.e., by 30.11.1992. Since then, no Re-Survey Medical Board has been held for the applicant. Further, the applicant has also stated that his medical condition has deteriorated and he had been operated upon since then.

8. In view of the foregoing, it has become necessary for us to order a Re-Survey Medical Board in respect of the applicant to assess the present medical condition of the applicant for the said disability, i.e., "Essential Hypertension (Primary)" before we adjudicate any further in the matter.

9. We, therefore, direct the respondents to convene a Re-Survey Medical Board for the applicant at Air Force Command Hospital, Bangalore, within a period of One (1) month from today. The applicant may be given sufficient advance notice for him to appear before the said Re-Survey Medical Board. The Medical Board is required to give its opinion only on the degree of disability and the probable duration of the said disease. The Medical Board proceedings complete in all respects be placed before us on 29.10.2015.

Sd/-

Lt Gen K Surendra Nath  
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah  
Member (Judicial)

27.07.2015  
[True copy]

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

Internet : Yes/No  
Internet : Yes/No

To

1. The Defence Secretary, Ministry of Defence  
South Block, DHQ Post, New Delhi – 110 011
2. The Chief of the Army Staff  
Army Headquarters, Sena Bhavan, DHQ Post  
New Delhi – 110 011
3. Officer I/C, DSC Records, PIN 901277, C/o 56 APO
4. The PCDA (Pension)  
Draupathighat, Allahabad, UP – 211 014
5. M/s S.P.Ilangovan and B.A.Thayalan  
Counsel for the applicant
6. Mr.V.Kadhirvelu, CGSC  
Counsel for the respondents
7. Officer in-Charge  
Legal Cell, ATNK & K Area,  
Chennai-600009.
8. Library, AFT, RB, Chennai.

Hon'ble Justice S.S.Satheesachandran  
(Member-Judicial)

and

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

O.A.No.152 of 2014

19.01.2016