

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.128 of 2014

Monday, the 22nd day of June 2015

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

AND

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

Ex Spr. B.Eswar Reddy, S/o Bollavula
(Service No.15319280Y) aged 35 years
Village: Nagireddy Palle
PO: Daddawada, Taluk-Komarole
District-Prakasam, Andhra Pradesh
Pin: 423373.

.. Applicant

By Legal Practitioner:
Mrs. Tonifia Miranda

vs.

1. Union of India
Rep. by its Secretary
Ministry of Defence (Army)
New Delhi-11.

2. The Chief of Army Staff
Army HQ, DHQPO, New Delhi-11.

3. The Record Officer
Madras Engineer Group
Pin-900 493, C/o 56 APO

4. The Principal Controller
of Defence Accounts
Office of PCDA (Pensions)
Allahabad, Uttar Pradesh
Pin-211 201

... Respondents

By Mr. N. Ramesh, CGSC

ORDER

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

1. This application has been filed by the applicant for the grant of disability pension with effect from 11.01.2008 (i.e) the date of his invalidment, duly rounded off according to letter of Government of India MOD dated 31.01.2001 and also to give Ex-Serviceman cadre and to give the benefits of Ex-Serviceman and grant other attendant benefits.

2. The facts of the applicant's case in brief would be as follows:

The applicant was recruited in the Indian Army as a Sapper on 21.01.1999. While serving in the army he was admitted in MH, Jalandhar and diagnosed for the ID "Other Non-Organic Psychosis (F-29) and was invalidated out of service as per invalidment medical board proceedings on 11.01.2008. The applicant submits that he contracted the disease due to the stress and strain in the Army and the environmental factors . He was placed in permanent low medical category "EEE" and was recommended disability element. The applicant was not given any pension after his discharge, or any medical facilities or financial assistance which aggravated his disease and his ID. He failed in his attempt to get disability pension till the

Second Appeal stage. The applicant also states that the respondents have not issued the discharge book, the medical board proceedings and other medical records. The applicant submits that the Hon'ble Supreme Court, High Courts and various AFT Regional Benches held that the psychiatric disorder is one of the classified diseases mentioned in the Entitlement Rules which arises as a result of stress and strain of military service. Therefore, the applicant requests that he may be granted disability pension and thus the application may be allowed.

3. The objections raised by the respondents in the reply-statement would be as follows:

The applicant's enrolment and the invalidation on the ground of ID "Other Non Organic Psychosis (F-29)" are not disputed. The Medical Board consisting of specialized doctors opined that the ID was constitutional and neither attributable to nor aggravated by military service. The respondents submit that the applicant was advised to prefer an appeal. The applicant preferred First Appeal as well as Second Appeal, but in both the appeals, the applicant could not succeed. The onset of the applicant's illness was in peace station and continued till he was invalided out of service. He had not served in any sensitive areas such as field/high altitude area/counter insurgency/operational area to hold the Army authorities responsible

for his disability. The grievance of the applicant is not at all genuine. The ID is constitutional in nature and is neither attributable to nor aggravated by military service. The three primary conditions for grant of disability pension as per Rule 173 and 173-A of Pension Regulations for the Army Part-I (1961), namely, (i) individuals must have been invalided out from service on medical grounds (ii) disability should have been accepted by the pension sanctioning authority as attributable to or aggravated by military service and (iii) the percentage of disability should have been assessed at 20% or more by the pension sanctioning authority. Therefore, the respondents request that the application may be dismissed.

4. On the above pleadings, we find the following points emerged for our consideration:

(1) Whether the applicant is entitled for the disability pension at 50% for his life with effect from 11.01.20008(i.e) the date of his discharge on invalidment?

(2) If so, is the applicant entitled to the rounding off the disability as per the Government of India letter dated 31.01.2001?

(3) To what other benefits the applicant is entitled to ?

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

5. We heard the arguments Mrs. Tonifia Miranda, learned counsel for the applicant and Mr. N.Ramesh, learned CGSC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for respondents.

6. We have given our anxious thoughts to the arguments advanced on either side. We have also thoroughly perused the documents on either side.

7. **Point Nos.1 and 2:** The averments in the application that the applicant was enrolled in Indian Army as a Sapper on 21.01.1999 and he served in the Army till he was invalided out of service on 11.01.2008 are not disputed. The further averment that the applicant was admitted in the military hospital Jalandhar for the disease "Other Non Organic Psychosis (F-29)" and was found unfit for service in the Army and therefore, he was invalided out of service by constituting an Invaliding Medical Board on 20.11.2007.

8. However, the claim of the applicant for disability pension was rejected by the 3rd respondent on 01.11.2008 on the ground that the said disability, "Other Non Organic Psychosis (F-29)" has been found to be neither attributable to nor aggravated by military service. The appeal preferred by the applicant against the said refusal before the

First Appellate Authority was rejected on 16.01.2010. The applicant preferred a Second Appeal against the decision of the First Appellate Authority on 31.05.2010 before the Defence Minister's Appellate Authority Committee on Pension and it was not disposed of for a long period and the applicant was sending reminders on several occasions and subsequently the said appeal was dismissed on 16.10.2012. The reason given by the said Committee is that the disability, "Other Non Organic Psychosis (F-29)" was neither attributable to nor aggravated by service. The denial of disability pension for the ID "Other Non Organic Psychosis (F-29) suffered by the applicant was challenged in this application and the applicant consequently prayed for grant of disability pension.

9. We find the Invaliding Medical Board had opined that the applicant was suffering from the disability "Other Non Organic Psychosis (F-29)" and it assessed the disability at 50% for the duration, "life long". It also found that the said disability was neither attributable to nor aggravated by military service, and was a constitutional one. However, in the opinion of the Medical Board it has categorically mentioned that the disability was not found in the applicant before entering the service. We also find that the first onset of the disability was referred in the Medical Board proceedings as set on 21.06.2007 in a place called Bathinda. Now the point at issue would be that whether

the disability of the applicant, "Other Non Organic Psychosis (F-29) is attributable to or aggravated by military service or a constitutional one as opined by the Invaliding Board. The learned counsel for the applicant would submit in her argument that the applicant was not having any disability prior to his service and the said disability did set in after he completed more than 8 years of service in army and the presumption under Rules 5 and 9 of "Entitlement Rules for Casualty Pensionary Awards, 1982" has to be drawn in his favour and the respondents shall be under legal obligation to rebut the same by giving valid reasons. She would further submit that Para-423 (a) of the "General Rules of Guide to Medical Officers (Military Pensions) 2002 would also enable the Court to presume that the disability was only due to the stress and strain caused by military service. She would also point out the principles laid down by the Hon'ble Apex Court in **Dharamvir Singh** case and **Sukhvinder Singh** case and submitted that the mere opinion of the Medical Board as to non-attributability or non-aggravability need not be taken as final opinion, since they have not given any reason in the Invaliding Medical Board proceedings for not detecting the disability at the time of enrolment of the applicant into the service and therefore, she would request that the disability pension be granted with interest from the date of the applicant's invalidment.

10. Per contra, the learned CGSC would submit that the disability was set in only in peace station and the opinion of the doctor would go to show that it was a constitutional one which would mean that it could not be detected at the time of his enrolment and therefore, the applicant is not entitled for disability pension. He would also submit that the opinion given by the doctors would be sufficient to dispel the presumption as to the attributable nature and its aggravability towards the disability of the applicant .

11. As we have seen already, the medical opinion of Invaliding Medical Board would show that the applicant did not have the disability prior to his enrolment of service. Admittedly, the doctors have not explained as to why the same could not be detected and if so, why it was not recorded at the time of his enrolment. The applicant had contracted the disability "Other Non Organic Psychosis (F-29)" after a period of 8 years of service. No doubt, the disability was set in only in a peace station. The principle laid down by the Hon'ble Apex Court in **Dharamvir Singh's** case would go to show that there cannot be any distinction between peace station or field station to decide about the attributability or aggravability of any disability. The relevant passage would be as given hereunder-

" 32. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of "Entitlement Rules for Casualty Pensionary Awards, 1982", the appellant is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant was suffering from "Generalised Seizure (Epilepsy)" at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes

resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a causal connection with the service conditions. "

(Emphasis supplied by us)

12. The provisions of Para 423 (a) of the "General Rules of Guide to Medical Officers (Military Pensions) 2002 would also say that the disabilities contracted in peace stations could also be considered for fixing the attributability or aggravability in favour of the applicant. It is worthwhile to extract the Para 423 (a) of the "General Rules of Guide to Medical Officers (Military Pensions) 2002 which reads as under:

"For the purpose of determining whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a Field Service / Active Service area under normal peace conditions. It is, however, essential to establish whether the disability or death bore a causal connection with the service conditions. All evidence, both direct and circumstantial will be taken into account and benefit of reasonable doubt, if any, will be given to

the individual. The evidence to be accepted as reasonable doubt for the purpose of these instructions should be of a degree of cogency, which though not reaching certainty, nevertheless carries a high degree of probability. In this connection, it will be remembered that proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. If the evidence is so strong against an individual as to leave only a remote possibility in his/her favour, which can be dismissed with the sentence "of course, it is possible but not in the least probable" the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of the doubt could be given more liberally to the individual, in cases occurring in Field Service/ Active Service areas."

13. We have also understood that the above referred judgment of Hon'ble Apex court in **Dharamvir Singh's** case had considered the said rule for drawing presumption of attributability or aggravability in favour of the individual. In the said circumstances, there is no other option except to presume that the applicant's disability of "Other Non Organic Psychosis (F-29)" set on him on 21.06.2007 at Bathinda, could be presumed as attributable to or aggravated by military service. No doubt, the said principle was affirmed by Hon'ble Apex court in the

judgments made in **Sukhvinder's case** and in **Srinivasa Reddy's** case. Therefore it is clear that any medical opinion without the support of materials for the opinion need not be relied upon. The relevant passage from the judgment rendered in Civil Appeal No.5140 of 2011 in between **K.Srinivasa Reddy** and **UOI & Others** filed against a judgment of this Tribunal made in T.A.No.100 of 2010, would read thus:

" Applying the above tests to the case at hand we find that no disease had been recorded or detected at the time of the appellant's acceptance for military service. The respondent has also failed to bring on record any document to suggest that the appellant was under treatment for any disabling disease hereditary or otherwise. In the absence of any such disabling disease having been noticed at the time of recruitment of the appellant, it was incumbent on the part of the Medical Board to call for the records to look into the same before coming to the conclusion that the disease subsequently detected could not have been detected on medical examination prior to the appellant's acceptance for military service. More importantly in para 29.2 of Dharamvir Singh's case (supra) it is stated on principle that a member is presumed to be in sound physical and mental condition at the time of entering service if there is no note or record to the contrary and in the event of his subsequently being

discharged from service on medical grounds any deterioration in his health is presumed to be due to service. "

14. According to the said judgment, the opinion of medical expert may be relied upon and need not be worshipped. Since we find no explanation for the disability "Other Non Organic Psychosis (F-29)" could be detected at the time of enrolment and the said disability was found to have set in after a long period of 8 years of service in the Army, we need not rely upon the opinion of the Invaliding Medical Board as to the non-attributability and non-aggravability of the disability. The presumption taken under Rules 5 and 9 of "Entitlement Rules for Casualty Pensionary Awards, 1982", is still holding good and further strengthened by the opinion of the specialist doctor that there was no past family history of the ID to hold as the reason for the origin. Therefore, we conclude that the applicant be deemed as affected by the disability "Other Non Organic Psychosis (F-29)" which was only due to stress and strain caused in the military service.

15. The refusal to grant disability pension holding that the said disability was not attributable to nor aggravated by service is not correct. Per contra, the applicant should have been granted with the disability pension from the date of his discharge. As per the opinion

of IMB, the disability was 50% and the duration was throughout his life and therefore, the disability pension for the applicant should have been given by the respondents from the date of his discharge. Accordingly we decide in favour of the applicant by holding that he is entitled to disability pension from the date of his discharge.

16. As regards the broad banding, the applicant has asked for the broadbanding of his disability in accordance with the letter issued by Government of India dated 31.01.2001. In the facts and circumstances of the case, we find that para 7.2 is applicable to the applicant. As per the contents, the percentage of disability element as accepted at 50% shall be broadbanded as 75%. Therefore, the applicant is entitled to a disability pension at 75% from the date of his discharge on invalidation. Accordingly, both the points are decided in favour of the applicant.

17. **Point No 3:-** We find that the applicant is entitled for the disability pension at 75% with effect from the date his discharge. In view of the fact that the applicant is eligible for a pension, the applicant is also entitled to other attendant benefits like ECHS facilities, canteen card, Ex-serviceman status etc. The respondents are directed to confer those benefits on the applicant accordingly.

18. **Point No 4:** Following the decisions reached in the previous points that the applicant is entitled to the reliefs as sought for, the application filed by the applicant is liable to be allowed as prayed for.

19. In fine the application is allowed as prayed for. The respondents are hereby directed to pay the arrears of disability pension payable from the date of discharge till this date and to issue PPO granting disability pension and other attendant benefits within a period of three months from today. In default to comply, the respondents shall be liable to pay the said sum with interest at 9% per annum till it is fully complied. No order as to costs.

Sd/

LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/

JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

22.06.2015
(True copy)

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

Internet : Yes/No
Internet : Yes/No

To:

1. The Secretary
Ministry of Defence (Army)
New Delhi-11.
2. The Chief of Army Staff
Army HQ, DHQPO, New Delhi-11.
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Pin-900 493, C/o 56 APO
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Pin-211 201
5. Mrs. Tonifia Miranda
Counsel for applicant.
6. Mr. E. Arasu, CGSC
Counsel for respondents
7. OIC, Legal Cell,
ATNK & K Area, Chennai.
8. Library, AFT, Chennai.

HON'BLE JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
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O.A.No.128 of 2014

Dt: 22.06.2015