

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No. 118 of 2014

Tuesday, the 14th day of June 2016

THE HONOURABLE JUSTICE S.S. SATHEESACHANDRAN
(MEMBER - JUDICIAL)

AND

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

Shaik Khader Mohiddin
aged 49 years, No. 2585252-W
Ex.Rect. S/o Shaik Bujja Sahib
C/o SK. Bashu, Door No.1-272-1,
Sivapuram Vill/Post/Mandal: Nizampatnam
Guntur District, Andhra Pradesh State. ...Applicant

By Legal Practitioner:
Mr. M. Selvaraj

vs.

1. Union of India,
Rep. by its Secretary
to Government of India
Ministry of Defence, New Delhi-110011.

2. Chief of Army Staff
Army Head Quarters (AHQ)
Defence Head Quarters (DHQ)
Integrated Head Quarters (IHQ)
New Delhi-110 011.

3. Principal Controller Defence
Accounts (Pension), Droupati Ghat
Allahabad, Uttar Pradesh, Pin-211 014.

4. The Officer-in-Charge
Records, Madras Regiment
Wellington, Nilgiris. ... Respondents

By Mr. K. Ramanamoorthy, CGSC

ORDER

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

1. We have passed an order on this O.A.No.118 of 2014 on 10th February 2015 with directions to the respondents to convene a Review/Resurvey Medical Board at MH Secunderabad for the purpose of ascertaining the degree of disability, viz., "*Acute Intestinal Obstruction due to Small Intestine Voluvucus (OPTD)*" on the applicant and its probable duration and to file a report before us by 15.04.2015.
2. The respondents convened the Review Medical Board on 17th July 2015 at MH Secunderabad. The applicant was admitted and examined as directed by this Tribunal and the respondents have now submitted their report with Review Medical Board proceedings.
3. In accordance with Regulation 173 of Pension Regulations for the Army, 1961, an individual is entitled to disability pension on account of disability which is attributable to or aggravated by service and assessed at 20% or more. The Hon'ble Apex Court in its judgment in the case of *Dharamvir Singh v Union of India & Ors (Civil Appeal No.4949 of 2013 arising out of SLP (C) No.6940 of 2010)* and followed by several subsequent judgments has summarized the guidelines for grant of disability pension. These are extracted as under:

(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)].

(iv) *If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the*

disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)]

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)]

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – Entitlement – General Principles", including paragraph 7, 8 and 9 as referred to above. "

4. During the Invaliding Medical Board proceedings held on 24th May 1984, prior to his discharge on 28.07.1984, the Board opined his disability at 20% with probable duration of two (2) years. The Board also opined that the disability was neither attributable to nor aggravated by military service. The Invaliding Medical Board came to the conclusion that the ID "*Acute Intestinal Obstruction due to small intestine Voluvucus (OPTD)*" was not connected with service. The PCDA (P), Allahabad also rejected the claim of the applicant for grant of

disability pension on the ground that the disease suffered by the applicant was neither attributable to nor aggravated by military service.

5. Applying the guidelines laid down by the Hon'ble Apex Court (supra), admittedly, the applicant was not suffering from the said disease at the time of his enrolment. He was afflicted by the said disease, during the course of service and, therefore, the presumption is that the deterioration in his health is on account of service, and the onus of disentitlement of disability pension lies with the employer, i.e., the Army. The Invaliding Medical Board was required to state reasons for opining that the said disease is neither attributable to nor aggravated by service. However, the said Medical Board gave no reasons except to state that the applicant had been complaining of vague pain all over abdomen, which was aggravated by routine exercise for the last one (1) month.

6. Even though the disease may have been constitutional in nature, however having regard to the vigorous training the applicant was undergoing, it had caused severe pain in the abdomen and therefore, the ID should have been considered as aggravated by service. Therefore, we are of the view that the reasons given by the Invaliding Medical Board are generic in nature and do not satisfy the guidelines laid down by the Hon'ble Apex Court. In view of the foregoing, we are inclined to agree with the submissions of the learned counsel for the

Applicant that the said ID should have been conceded as "aggravated by service".

7. The Review Medical Board ordered by this Tribunal was specifically asked to assess the present degree of disability for the disease "*Intestinal Obstruction due to Small Intestine Voluvucus (OPTD)*" and its probable duration. In the report filed before us, the medical specialist has stated,

*"Obese. Operation scar. Well healed, soft and supple.
No scar tenderness. No abnormal finding per abdomen.
At present, no disability."*

Further, the Review Medical Board has opined that the condition of the disability since the last Board conducted on 24th May 1984 has "improved". Further, the Review Medical Board has assessed the present degree of his disability to be 6 to 10% for life and intervening period.

8. It is settled law that the opinion of the Medical Board should normally be given primacy and credence and has been upheld in various judgments of the Hon'ble Apex Court including in the case of *A.V.Damodaran, reported in (2009) 9 SCC 140*.

9. In view of the foregoing and the fact that the Review Medical Board has opined that the applicant's condition has improved and the disease has subsided since his release from service and is now assessed at less than 20% (6 to 10%) for life and intervening period,

we do not find any reason to interfere with the assessment of the said Medical Board.

10. Pensionary award, when the degree of disablement is assessed at less than 20%, is governed by Paragraph 186 of Pension Regulations for the Army, 1961. For a better understanding, the said paragraph is reproduced below:

"186. (1) An individual who is invalided out of service with disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.

(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. He shall, however, continue to draw the service element of disability pension."

11. From a plain reading of the above Regulation, it is clear that the applicant is not entitled to the grant of disability element of disability pension, as even though his disability has been found to be aggravated by service, it has been assessed at less than 20% for life by the Review Medical Board. However, since the applicant's disability has been found to be aggravated by service, he is entitled to draw service element of disability pension, as entitled, in terms of Regulation 186 (supra). Applying the principles laid down by the Hon'ble Apex Court in the case of *Union of India and Others v. Tarsem Singh* reported in (2008) 8 SCC 648, the arrears are restricted to three (3) years prior to the date of filing of this application (12.08.2014), i.e., 12.08.2011.

12. In sum, the O.A. is partly allowed. The applicant is entitled to service element of disability pension alone, for the services rendered, with effect from 12.08.2011. Arrears shall be paid within a period of three (3) months, and in default, an interest of 9% p.a. is payable on the said arrears. No costs.

LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

JUSTICE S.S. SATHEESACHANDRAN
MEMBER (JUDICIAL)

14.06.2016

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

Internet : Yes/No
Internet : Yes/No

VS

*N.B.: The earlier order dated 10.02.2015
passed by us in the above O.A. shall form part of this order.*

M (A)

M (J)

To:

1. The Secretary
Government of India
Ministry of Defence,
New Delhi-110011.

2. Chief of Army Staff
Army Head Quarters (AHQ)
Defence Head Quarters (DHQ)

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4. The Officer-in-Charge
Records, Madras Regiment
Wellington, Nilgiris.

5. Mr. M. Selvaraj,
Counsel for applicant

6. Mr. K. Ramanamoorthy, CGSC
For Respondents.

7. OIC, Legal Cell, HQ DAKSHIN BHARAT AREA, Chennai.

8. Library, AFT/RBC

HON'BLE MR.JUSTICE S.S.SATHEESACHANDRAN
MEMBER (JUDICIAL)

AND

HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

O.A.No.118 of 2014

Dt: 14.06.2016