

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No. 39 of 2015

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)

Rank: Ex Hav Alala Ramakrishna

Service No.14414097-L

Son of Alala Venkata Rao, aged about 38 years

Village – Tekkalavalasa, Post – Perumali

Tehsil – Therlam, District – Vizianagaram

Pin: 532 127 (A.P).

...Applicant

By Legal Practitioners:

M/s. M.K.Sikdar and S.Biju

vs

1. Union of India

Represented by The Secretary, Govt. of India

Ministry of Defence, South Block, New Delhi – 110 011

2. The Chief of Army Staff

Integrated HQs of MOD (Army)

Post – DHQ, New Delhi – 110 011

3. The Officer in-Charge

Topkhana Abhilekh, Artillery Records

Nasik Road Camp, Pin – 908 802, C/o 56 APO

4. The PCDA (P)

Draupadi Ghat, Allahabad (U.P)

Pin – 211 014

...Respondents

Mr. K.Ramanamoorthy, CGSC

ORDER

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

1. This Original Application is filed by the applicant with a request to set aside the order of the respondents dated 10th October 2011 and to grant him disability pension broadbanded to 50%, in accordance with the Government of India, Ministry of Defence letter, dated 30th January 2001.

2. Briefly, the applicant states that he was enrolled in Indian Army on 22.02.1995 and that at the time of joining the Army, he was not suffering from any ailments and had no history of any constitutional disease. He also states that during the course of his service he had suffered with the disease "*Spondy Loarthropathy (HLA B27+ve)*" and the Categorization Board held on 3rd September, 2000 opined that the invaliding disease is attributable/aggravated by military service and placed the applicant in low medical category. Due to stress and strain of service and domestic problems, he opted for voluntary discharge from service and accordingly, he was discharged from service with effect from 1st April 2011 after completing 16 years, 01 month and 09 days. At the time of his discharge from service, the Release Medical Board proceedings had opined that the ID was aggravated by military service, but assessed the degree of disability to 1-5% (less than 20%) and he was not granted disability pension. He would state that this is contrary to the Re-categorisation Medical

Board proceedings held at Military Hospital, Jaipur on 03rd September 2000 which opined that the disability was assessed at 30%. Aggrieved, he has challenged the order dated 10th October 2011 issued by the respondents rejecting his claim for disability.

3. The respondents do not dispute the facts of the applicant's enrolment in the Army, his disability and also that the applicant sought for voluntary discharge from service with effect from 1st April 2011. The applicant was brought before the Release Medical Board which found to be the said ID to be aggravated by military service and the degree of disability of the applicant was assessed at 1-5% (less than 20%) for life. They would also aver that in accordance with Para 173 of Pension Regulations for the Army 1961, Part-I, the disability pension can only be granted, if it is attributed to or aggravated by military service and the disability is above 20%. In the instant case, though the disability was found to be aggravated by service, however, since the degree of disability was assessed to be below 20%, i.e., 1-5%, the respondents vide their letter dated 10th October 2011 rejected the claim of the applicant as it does not come under the said rules. The applicant was given an opportunity to file an appeal before the Appellate Committee within six months from the date of receipt of the said letter. However, the applicant had not chosen to do so. They would rebut the claim of the applicant that he had applied to the First and Second Appellate Committees, as

baseless. In view of the foregoing, the respondents would request that the case be dismissed being devoid of any merit.

4. We have heard the submissions of the learned counsel for the applicant and the learned Central Government Standing Counsel appearing for the respondents. We have also perused the documents produced on either side.

5. The facts of the case that the applicant's enrolment in the Army, his voluntary request for discharge from service and that accordingly, he was discharged from service are not disputed by either side. The only point of issue is that the Re-categorization on 3rd September 2003 had opined the disability to 30%, however the Release Medical Board which was convened in 2011, i.e., approximately eight years later had opined that the disability suffered by the individual to be 1-5% for life. Since the applicant retired in 2011, the case of the applicant comes under the purview of Pension Regulations for the Army, 2008, Part-I which are effective to all the persons who retired after 1st July 2008. The relevant provisions pertaining to personnel who had retired voluntarily and Entitlement Rules for grant of disability pension are as follows:

" 83. (a) An officer who retires voluntarily/or a Personnel Below Officer Rank who is discharged at his own request on compassionate ground shall w.e.f. 01.01.2006 be eligible for award on account of disability provided he/she has foregone lump-sum compensation in

lieu of that disability. " (Pension Regulation for the Army Part-I, 2008)

Further, "Appendix to Ministry of Defence letter No. 1(3)/2202/D(Pen/Pol), dated 18.1.2010", reads thus:

"4. Invalidment from Service: (a) Invalidation from service with disablement caused by service factors is a condition precedent for grant of disability pension. However, disability element will also be admissible to personnel who retire or are discharged on completion of terms of engagement in low medical category on account of disability attributable to or aggravated by military service, provided the disability is accepted as not less than 20%.

(Emphasis supplied by us)

(b) An individual who is boarded out of service on medical grounds before completion of terms of engagement shall be treated as invalided from service.

(c) PBOR and equivalent ranks in other services who are placed permanently in a medical category other than SHAPE 1 or equivalent and are discharged, because (i) no alternative employment suitable to their low medical category can be provided, or (ii) they are unwilling to accept alternative employment, or, (iii) they having been retained in alternative employment are discharged before the completion of their engagement, shall be deemed to have been invalided out of service. "

6. From a close scrutiny and interpretation of the above rules, it is apparent that a person who retired voluntarily is also entitled to disability pension, provided the disability is attributable/aggravated by military

service and is accepted at being not less than 20%. In the instant case, the applicant's disability though aggravated by service, it has been found to be less than 20%, i.e., 1-5% for life and therefore, he does not fulfill the eligibility criteria for grant of disability pension, as per rules.

7. Accordingly, we are inclined to agree with the contention of the Respondents that the applicant is not entitled to disability pension, as he does not fulfill the eligibility criteria. We note that the applicant is a member of ECHS Scheme. If the applicant feels that his disability has aggravated after his retirement from service, he is entitled to make a request to the respondents for a Re-Survey Medical Board with support of medical opinion, in terms of Para 86 of Pension Regulations for the Army, 2008, Part-I which reads as follows:

"Manifestation of Disability after retirement/discharge:

*86. Service personnel who had retired/discharged (otherwise than[**] in any of the circumstances specified in Regulation 29 & Regulation 41) on a retiring /service pension/gratuity, but who within a period of 10 years from the date of retirement is found to be suffering from a disease which is accepted as attributable to his military service, be granted in addition to his retiring/service pension/gratuity, a disability element with effect from the date of Review Medical Board constituted by the Director General Armed Forces Medical Services. "*

*** The erstwhile phrase "at his own request or" deleted in the light of GoI, MoD No.16(5)/2008/D(Pen/Pol), dated 29.09.2009 which stipulates that disability element be granted even in case of voluntary retirement/discharge on own request w.e.f. 01.01.2006."*

8. In fine, the O.A. is dismissed, but, reserving the right of applicant to seek for a Review Medical Board, if so advised. No costs.

Sd/
Lt Gen K Surendra Nath
Member (Administrative)

Sd/
Justice S.S. Satheesachandran
Member (Judicial)

14.06.2016
(True copy)

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

Internet : Yes/No
Internet : Yes/No

To

1. The Secretary, Govt. of India
Ministry of Defence, South Block, New Delhi – 110 011
2. The Chief of Army Staff
Integrated HQs of MOD (Army)
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Pin – 211 014
5. M/s M.K.Sikdar and S.Biju
Counsel for the applicant
6. Mr.K.Ramanamoorthy, CGSC
Counsel for the respondents
7. Officer in-Charge
Legal Cell
DAKSHIN BHARAT AREA, Chennai.
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.39 of 2015

Dt: 14.06.2016