

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.39 of 2014

Monday, the 24th day of November 2014

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

AND

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

Rank-Ex Sepoy,
Name Koteganti Abdul Ravoof
Service No.14594172-K
S/o Late K. Fakruddin
aged about 46 years
No.4-1-208, 3rd Cross, 6th Road
Near Sivalayam,
Post & District-Anantpur (A.P)
Pin-515004.

... Applicant

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

vs.

1. Union of India, Rep. by The Secretary
Government of India
Ministry of Defence, New Delhi-110 011.

2. The Officer-in-Charge
EME Record Office
Trimulgerry, Secunderabad
Pin-500 021.

3. The PCDA (P)
Draupadi Ghat, Allahabad (UP)
Pin-211 014.

.... Respondents

By Mr. B.Shanthakumar, SPC

ORDER

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

1. This application is filed by the applicant for the relief of granting disability element of pension to be broad-banded to 50% from 26.09.1997 for life after setting aside the impugned order dated 30.05.2003 and 09.06.2012 passed by the second respondent and for consequential monetary benefits and costs.

2. The facts of the case in the application would be as follows:

The applicant was enrolled in Indian Army on 21st March 1986 as Sepoy. After completion of his training in Secunderabad, the applicant was posted in Burmulla, Jammu & Kashmir. While in operation at border, one soldier fell down on the hip of the applicant and he sustained injury and was admitted in Base Hospital in Srinagar. After treatment, he was put on regular duties, but the applicant had the complaint of Low back ache. The applicant was posted to Bhopal, Madhya Pradesh and was assigned with trade work , viz., Motor Vehicle Electrician work. Due to stress and strain in military service and the adverse effect of strenuous parade, physical training, drill and working condition, the Low back ache aggravated and he reported sick in the Military Hospital, Bhopal. The applicant was placed under permanent low medical category and the disease was opined as

attributable to military service and the disability was assessed at 20%. The applicant was thus discharged under Rule 3 (III) (v) of Army Rule 1954. The applicant was granted disability pension assessed at 20% and he received the same till 25.09.1997. The disability element of pension was discontinued since the RSMB held at Command Hospital, Bangalore which re-assessed the disability at 20% on 20th November 1997 which was reduced by PCDA on its opinion to 11 to 14%/. The applicant sought for continuation of disability element of pension which was not given. However, he was brought before Resurvey Medical Board, Command Hospital, Bangalore on 08.02.2003 and it opined that there was no change in his condition as assessed in the previous Board. The second respondent confirmed the discontinuance of the disability element of pension in its order dated 30.05.2003 and advised the applicant to prefer an appeal against RSMB, if aggrieved by its opinion. The applicant was unable to prefer an appeal by providing Corrigendum PPO issued either by the bank or second respondent. The applicant was also not aware of the broadbanding system sanctioned by the Government of India introduced in its letter dated 31.01.2001. Therefore, the applicant again represented before the second respondent to constitute a fresh RSMB to re-assess its disability so as to draw the disability element of pension. The subsequent representation of the applicant before the Defence Pension

Adalat was also not fruitful. Subsequent representations of the applicant were also not considered by the respondents. Therefore, the applicant filed an application before this Tribunal in M.A.No.46 of 2014 in O.A.No.30 of 2014 on 04.03.2014 for redressal and the said application was dismissed as withdrawn with liberty to file a fresh application on the same cause of action. Therefore, the applicant has come forward with the present application for the grant of disability element of pension broadbanded from 26.09.1997 for life and accordingly, the application filed for that purpose may be allowed.

3. The objections raised by the respondents would be as follows:

The applicant Ex Sepoy K. Abdul Ravoof was enrolled in the army on 21.03.1986 and was discharged from service with effect from 31.10.1992 under Item III (v) of Table annexed to Rule 13 (3) of Army Rule 1954 due to unwillingness to continue in the alternative employment on being placed in low medical category due to his disabilities (a) Neurosis (b) Low back ache. The second disability was found aggravated by military service due to stress and strain and the same was assessed at 20% for two years and the applicant was granted disability pension consisting of service element for life with effect from 01.11.1992 and disability element at 20% for five (5) years. Accordingly all other terminal benefits were granted along with the disability pension for Low back ache. The applicant was

brought before RSMB on 20.11.1997 at CHAF, Bangalore which re-assessed the disability at 20% for five years with effect from 26.09.1997. However, the same was rejected by PCDA, Allahabad after accepting the disability at 11 to 14% which is below 20% for five years. Therefore, the disability element of pension was discontinued with effect from 26.09.1997 to 19.11.2002. The same was communicated to the applicant by the second respondent in its letter dated 03.09.1998 with an advice to prefer an appeal within six months. The first appeal preferred by the applicant was also rejected by Appellate Committee on First Appeals dated 10.05.2000. After completion of five years, a Resurvey Medical Board was constituted on 10.02.2003 to re-assess the disability on and after 19.11.2002. The said Board had also re-assessed the disability for life at less than 20%, i.e., 11 to 14%. Therefore, the disability element of pension was again discontinued with effect from 19.11.2002 for life. It was communicated through a letter dated 30.05.2003 with an advice to prefer an appeal against the discontinuation within six months from 30.05.2003. But the applicant failed to prefer an appeal within the stipulated time. After a lapse of four years, the applicant made a representation before the Pension Adalat, Secunderabad for the grant of one rank one pension and to continue his disability element of pension. Furthermore, the applicant submitted a petition on

22.03.2012 for the conduct of fresh RSMB and the same was also promptly replied by the respondents. Without filing any appeal, the applicant has come forward with this application before this Tribunal for the grant of disability element with effect from 26.09.1997 for life with rounding off benefit with interest and costs, which cannot be considered. The claim of the applicant is also barred by law of limitation and as per the provisions of Para 173 of Pension Regulations for the Army, 1961 (Part-I), since his disability was re-assessed at less than 20%. The applicant is not entitled for the grant of broad-banding as promulgated in the Government of India letter dated 31.01.2001 since the applicant was invalided out of service prior to 01.01.1996. However, a policy was promulgated by the Government of India on 19.01.2010 for those personnel who were invalided out of service prior to 01.01.1996 and in the said letter it has been mentioned that the benefit of Para 7.2 of the Ministry's letter dated 31.01.2001 shall be extended to armed forces officers and the PBOR who were invalided out of service prior to 01.01.1996 and in receipt of disability/war injury pension as on 01.07.2009 will get the disability pension broadbanded. The 3rd respondent also issued a circular on 04.03.2010 wherein it has been clarified that the personnel retired or invalided out prior to 01.01.1996 who are not in receipt of disability pension as on 01.07.2009 are not entitled for broad-banding.

Therefore, the claim of the applicant for the grant of disability element of pension duly broad-banded as per letter of Government of India dated 31.01.2001 with effect from 26.09.1997 cannot be granted. Accordingly, the application may be dismissed.

4. On the above pleadings, the following points are found emanated towards consideration:

1) Whether the impugned order issued by the 2nd respondent dated 30.05.2003 and 09.06.2012 are liable to be quashed ?

2) Whether the applicant is entitled for the grant of disability element of pension broad-banded to 50% with effect from 26.09.1997 for life with interest and costs ?

3) To what relief the applicant is entitled for ?

5. We heard the arguments of M/s M.K. Sikdar and S.Biju, learned counsel for the applicant and Mr. B.Shanthakumar, learned Senior Panel Counsel assisted by Major Suchithra Chellappan, appearing for the respondents. We also perused the written arguments of the applicant as well as the respondents.

6. The learned counsel for the applicant would submit in his argument that the applicant served the nation as Sepoy in Indian Army from the date of enrolment on 21.03.1986 for 6 years 7 months and 11 days and he was invalided out of service due to the disabilities,

viz., Neurosis and Low back ache under Rule 13(3)(III) (v) of Army Act 1954. He would also submit that the disability of Low back ache was found by the Invaliding Medical Board as aggravated due to military service and was assessed at 20% disability for 5 years and accordingly, the applicant was issued a PPO for disability pension from 01.11.1992 to his lifetime regarding service element and from 01.11.1992 to 25.09.1997 for disability element. He would further submit that the applicant was subsequently brought before RSMB on 20.11.1997 at CHAF, Bangalore for assessing the disability element with effect from 26.09.1997 for the disability 'Low back ache' and it was assessed at 20% for five more years and the opinion of the Medical Board regarding the disability was static. However, the PCDA had arbitrarily re-assessed the disability at less than 20% without minding the opinion of the Medical Board and therefore, the applicant was not granted with disability element of pension. He would also submit that the appeal preferred by the applicant against the said order was also not in favour of the applicant and the applicant was called for Re-Survey Medical Board on 10.02.2003 which also opined that there was no change in his condition as assessed by previous Board and the disability was found static. He would further submit that the PCDA has no authority to interfere with the finding of the Medical Board in view of the judgment of the Hon'ble Apex Court in

several cases that the opinion of the Medical Board should be given primacy and credence. He would therefore submit that the order passed by the PCDA should have been set aside and the Medical Board's opinion dated 20.11.1997 should have been upheld for five years till 25.09.2002 and should have been broad-banded to 50% disability pension in view of the policy of the Government of India issued in its letter dated 31.01.2001. He would further submit that the subsequent RSMB held on 10.02.2003 to assess the disability element from 26.09.2002 also gave its opinion that the extant disability of Low back ache was static, but had followed the earlier decision of PCDA in assessing the disability at less than 20%, i.e., 11 to 14%. He would also submit that the said Medical Board had opined that the disability is static in the remaining part of applicant's life and therefore, the applicant is entitled for disability element of pension at 50% broad-banded in view of the policy letter dated 31.01.2001, even if the disability was reduced at 11 to 14%. He would also submit that the policy letter of Government of India dated 19.01.2010 and the circular dated 04.03.2010 will have no impact on the applicant's case since the applicant should have been granted disability pension at 20% even after 26.09.1997 onwards and therefore entitling him to broadbanding to 50% on issue of Government of India letter

dated 19.1.2010. He would therefore request us to allow the application as asked for.

7. Per contra, the learned Senior Panel Counsel would submit in his argument that the case of the applicant that the rejection of disability as opined by the Review Medical Board held on 20.11.1997 by PCDA was as per the extant rules and it was not challenged by the applicant at the time of discontinuance of disability element of pension. When the applicant has not chosen to challenge the order passed by PCDA even in this application, he cannot be granted with 20% disability pension with effect from 26.09.1997 for the duration of five years. He would also submit that the applicant challenged the impugned orders dated 30.05.2003 and 09.06.2012 issued by the second respondent on the basis of the Resurvey Medical Board held on 10.02.2003. The earlier orders passed by the respondents were not in dispute, as per the pleadings of the applicant. He would also submit that the applicant's challenge against the order of PCDA passed on the Resurvey Medical Board dated 20.11.1997 cannot be sustained since it became final against the applicant. The applicant being a pre-01.01.1996 retiree cannot invoke the provisions of the policy letter of the Government dated 31.01.2001 as it is not applicable to him. He would further submit that the Government of India in its considerate move extended the benefit to pre-01.01.1996 retirees who were

receiving disability pension towards broad-banding with certain conditions. According to the said letter, pre-01.01.1996 retirees who are in receipt of disability pension as on 01.07.2009 would alone be granted with the benefit of broad-banding. Furthermore, he would also draw our attention to the passage in the said letter that wherever disability element was not allowed for the disability pension being accepted as less than 20% either at initial stage or at subsequent stage on re-assessment of disability, the same will continue to be disallowed and such cases will not be re-opened. Therefore, he would submit that the applicant's disability which was reduced to 11 to 14% by the PCDA after 26.09.1997 and also by the Re-Survey Medical Board held on 10.02.2003 will disentitle the applicant under the said provisions of the policy letter dated 19.01.2010. He would also submit that this policy which is not repugnant to any other rules is binding on all the personnel which includes the applicant also and therefore, the applicant cannot get any relief sought for by him. Therefore, he would request us to dismiss the application.

8. We have given our anxious thoughts to the arguments advanced on either side. We have also considered the points raised in the written arguments.

9. **Points 1 and 2:** Indisputably, the applicant a Sepoy was invalided out from service on 31.10.1992 on the ground of disabilities,

viz., (a) Neurosis and (b) Low back ache and the second disability Low back ache was considered as aggravated by military service and accordingly, he was granted disability pension with effect from 01.11.1992. The PPO produced by the applicant would go to show that the service element of disability pension was granted to the applicant till his lifetime. But the disability element of pension was granted only for five years till 25.09.1997, in accordance with the duration mentioned in the Invaliding Medical Board. Therefore, the applicant was subjected to a RSMB on 20.11.1997 and it found that the disability of the applicant was static at 20%. However, the PCDA considered the opinion of the said Re-Survey Medical Board, but reduced the percentage of disability at less than 20% (11 TO 14%) and consequently the applicant was not continued with disability element of pension, but only service element as found in the PPO.

10. Even though the said order of PCDA was said to have been challenged by filing an appeal, no document has been produced to prove the same. Here also the said order of PCDA was not challenged by the applicant. However, it was argued by the learned counsel for the applicant that the order passed by PCDA was not in consonance with the judgment of Hon'ble Apex Court as well as this Tribunal. In order to consider the submission of the learned counsel for the applicant, we have to scrutinize the pleadings of the applicant as

stated in the application. The relief sought for by the applicant is for the grant of disability pension duly broad-banded at 50% with effect from 26.09.1997 onwards. The basis of such relief as culled out from the application is that the said assessment of 11 to 14% as made in the RSMB was reduced by PCDA and it should have been broad-banded in view of the letter of Government of India dated 31.01.2001. It is also the case of the applicant that the restriction of benefits to post-01.01.1996 retirees was watered down by the Hon'ble Apex Court in **K.J.S. Buttar vs. UOI** reported in **(2011) 11 SCC 429** and therefore, it ought to have been made applicable to the applicant, but it was not done so. On a careful perusal of the letter dated 31.01.2001, we find in Para 4.2 that the benefits of broad-banding shall be available to the retirees on and after 01.01.1996. The judgment of Hon'ble Apex Court was pronounced on 31.03.2011. The letter issued by the Government of India was on 19.01.2010 conferring benefits to the pre-01.01.1996 retirees with the aforesaid conditions. The letter of Government of India dated 19.01.2010 and the circular of PCDA dated 04.03.2010 were not brought to the notice of Hon'ble Apex Court and the conditions imposed therein were not considered as *ultra vires*. Therefore, the said policy laid by Government of India as per 19.01.2010 letter should have been considered alive in the light of the principles laid down in **K.J.S.**

Buttar's case towards the claim of the pre-01.01.1996 retirees including the applicant. towards his claim.

11. Therefore, the argument of the learned counsel for the applicant that the provisions of the letter dated 19.01.2010 issued by the Government of India and the Circular of PCDA issued on 04.03.2010 are not applicable to the applicant's case cannot hold water. No doubt, the applicant did not challenge the order of PCDA in refusing the percentage of disability from 20% to 11 to 14% as given in RSMB dated 20.11.1997. The applicant cannot now argue against the order when the said order of PCDA has not been sought to be set aside nor produced for our perusal. In the said circumstances, the applicant should have relied upon his pleadings and asked for relief upon the same. He has only asked for setting aside the orders dated 30.05.2003 and 09.06.2012 which were issued in pursuance of RSMB held on 10.02.2003. The applicant has also calculated the delay in preferring this Original Application from the date of impugned order, i.e., 30.05.2003, only. He had not chosen to calculate the delay from 1997 when PCDA has passed orders reducing the percentage of disability from 20% to 11 to 14%. In the aforesaid circumstances, the applicant cannot put forth any new case towards the order passed by PCDA in the year 1997.

12. The next point would be the merits in the claim of the applicant through the policy letter dated 19.01.2010. For better understanding of the applicability of the letter issued by Government of India dated 19.01.2010, the relevant portions are necessarily, be extracted as below:

*"No.10 (01)/D (Pen/Pol)/2009/Vol.II
Government of India
Ministry of Defence
Department of Ex-Servicemen Welfare
New Delhi.*

Dated 19th Jan 2010

To

*The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff*

Subject: Revision of Disability/War Injury Element of pension in respect of Armed Forces Officers and PBOR pensioners based on the recommendations of Cabinet Secretary Committee Report.

Sir,

The undersigned is directed to state that in order to consider various issues on pension of Armed Forces Pensioners, Government had set up a Committee headed by the Cabinet Secretary. The recommendations of the said Cabinet Secretary's Committee on disability/war injury pension have been considered by the Government and the President is pleased to decide that with effect from 1.7.2009, the concept of broad banding of percentage of disability/war injury, as provided in Para 7.2 of this Ministry's letter No.1 (2)/97/D(Pen-C) dated 31.01.2001, shall be extended to Armed Forces Officers and PBOR who were invalided out of

service prior to 1.1.1996 and are in receipt of disability/war injury pension as on 1.7.2009. Wherever, the disability element/war injury pension in pre-1.1.1996 cases was not allowed for disability being accepted as less than 20% at initial stage or subsequent stage on reassessment of disability, the same will continue to be disallowed and such, cases will not be re-opened. "

(Emphasis supplied by us)

13. Consequent upon the policy letter, the PCDA has also issued a Circular dated 04.03.2010 in which Para-3 is dealing with the crux of the case. It runs as follows:

"AFFECTED CASES

3. With effect 01.07.2009, the concept of broad banding of percentage of disability/war injury, as provided in Para 7.2 of MOD letter dated 31.01.2001 quoted above, shall be extended to Armed Forces Officers and PBOR who were invalided out of service prior to 01.01.1996 and are in receipt of disability/war injury pensions as on 01.07.2009. Wherever, the disability element/war injury element of pension in Pre 01.01.1996 cases was not allowed for disability being accepted as less than 20% at initial stage or subsequent stage on re-assessment of disability, the same will continue to be disallowed and such cases will not be re-opened. "

14. In both, the letter dated 19.01.2010 issued by Ministry of Defence, Government of India and the Circular of PCDA dated

04.03.2010, it is clearly stated that the pre-01.01.1996 retirees whose disability was originally accepted for more than 20%, but subsequently re-assessed as less than 20% cannot get the benefit of broad-banding as per the benefits given under the policy letter dated 31.01.2001 and the re-assessed disability will alone continue and it shall be disallowed and such cases will not be re-opened. The applicant whose disability was originally granted at 20% by the IMB till 25.09.1997 and on re-assessment reduced to 11 to 14% as per the order of PCDA which was also accepted in the second RSMB held on 10.02.2003 and was continued till the date of this application and therefore, the above referred passage in the policy letter of Government of India dated 19.01.2010 is squarely applicable to the applicant's case. In view of such disallowance of broad-banding in favour of the pre-01.01.1996 retirees whose percentage was reduced to below 20%, the applicant who is attracted within such exception will not get any relief as asked for by him. For the reasons mentioned above, the impugned orders passed by the respondents are perfectly in accordance with the rules and therefore, we do not find any merit on the claim of the applicant. Hence, both the points are decided against the applicant.

15. **Point No.3:** For the discussions held above in Point Nos.1 and 2 that the impugned orders are not liable to be set aside and the applicant is not entitled to get the relief as asked for by him and the

application filed by him for that purpose is liable to be dismissed. However, the applicant is at his liberty to challenge the order of PCDA (P) passed in the year 1997 in reducing the percentage of disability from 20% to 11 to 14% by producing the said order with necessary pleadings subject to law of limitation. The present impugned orders being dependant orders to the said order of PCDA are also challengeable to that extent.

16. In fine, the application is dismissed with the aforesaid observations. No order as to costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

24.11.2014
(True copy)

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

VS

To:

1. The Secretary
Ministry of Defence,
New Delhi-110 011.
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4. M/s. M.K. Sikdar & S.Biju
Counsel for applicant.
5. Mr. B. Shanthakumar, SPC
For respondents.
6. OIC, Legal Cell,
ATNK & K Area, Chennai.
7. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

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Dt:24.11.2014