

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.73 of 2014

Wednesday, the 5th day of November, 2014

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

and

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

Ex-Rect Tatarao Vankala
Service No. 15327748 W
Son of Mr.Vankala Gangayya, aged about 33 years
Village – Peddabadam, Post-Antharakudda
Mandal - Vajrapukotturu
Dist-Srikakulam (A.P), PIN-532 222

...Applicant

By Legal Practioners:
M/s M.K.Sikdar, D Eswara Rao, S.Biju

vs

1. Union of India
Represented by – The Under Secretary
Govt. of India, Ministry of Defence
New Delhi – 110 011
2. The Chief of the Army Staff
Integrated HQs of MOD (Army)
Post – DHQ, New Delhi – 110 011
3. The Officer in-Charge
Madras Engineer Group
PIN: 900 493, C/o 56 APO
4. The PCDA (P)
Draupadi Ghat
Allahabad (U>P), PIN: 211 014

...Respondents

Mr.B.Shantha Kumar, SPC

ORDER

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

The applicant, Ex-Rct Tatarao Vankala, in his Original Application, has sought for quashing the impugned order No. 1(128)/2010/D(Pen/Appeal), dated 19 October 2010 passed by the 1st respondent, quash the same and declare his disability as aggravated by military service and grant him disability pension.

2. The applicant was enrolled in Indian Army on 20 April 2002 as a recruit and during his training at MEG Centre, Bangalore fell sick in January 2003 and was referred to Command Hospital, Bangalore for treatment. He submits that he was diagnosed with "Autosomal Dominant Polycystic Kidney Disease" and was placed in Category "EEE(P)". The applicant submits that he was invalided out of service on 16 April 2003 after 11 months and 28 days of service under Rule 13 (3) III(iii) having been found medically unfit for further service. He submits that at the time of discharge, his disability was assessed as 40% for life and, even though, the disability claim was preferred by the Commanding Officer and forwarded to the 3rd respondent, the said disability was not granted by the 4th respondent. The applicant would further submit that he preferred his first appeal in March 2008 but it was rejected by the 2nd respondent vide their order dated 29 September 2009. He again preferred a second appeal on 4 August 2010 which was also rejected by the 1st respondent vide their letter dated 19 October 2010 stating that the "ID is considered as neither attributable to nor aggravated by military service". The applicant would submit that he was recruited to the Army after vigorous physical tests and

meticulous medical examination and that he was not suffering from any ailments and there was no history of constitutional disease in his family. Hence the ID was caused due to strenuous training in the Army and is attributable to or aggravated by military service. Therefore, he pleads that the impugned order dated 19 October 2010 passed by the 1st respondent is liable to be quashed and he be granted 50% disability pension after broad banding, as applicable.

3. The applicant, in support of his contention would cite the judgment of the Hon'ble Supreme Court's order reported in 2014 (1) AFLJ 01 [Dharamvir Singh vs Uol and others as well as Civil Appeal No.5605 of 2010 in the case of Sukhvinder Singh vs Uol and others where the Hon'ble Court has observed as under:

“Any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service.”

4. The respondents, in their reply statement would submit that the applicant was enrolled in the Army on 20 April 2002 and while undergoing basic military training, he was found to be suffering from a constitutional disease. Based on the opinion of the Medical Specialist, he was brought before the Invaliding Medical Board on 06 March 2003 at Command Hospital (Air Force), Bangalore. The Medical Board recommended that he be invalided out of service in medical category 'EEE' with 40% disability for life due to diagnosis “Autosomal Dominant Polycystic Kidney Disease (N-28.1)”. The Medical Board opined that the disability of the applicant is a congenital disease and is

not attributable to service. Accordingly, the applicant was invalidated out of service on 16 April 2003 under Army Rule 13 (3) item III (iii) on medical grounds and struck of strength with effect from 17 April 2003. They would further aver that though the applicant was found to be medically fit at the time of his enrollment in the Army, the hidden constitutional / metabolic disorders could not be detected because of the medical examination of the applicant at the time of enrollment was of a very primary nature and was done by a single medical officer which is proved by the fact that the report of this medical examination is recorded in a form 'Primary Medical Examination Report (AFMSF-2A)'. However, certain illnesses may require a period of observation for detection as such individuals generally appear absolutely normal at the time of enrolment. But such diseases come to light only when he starts behaving abnormally. Had the applicant not been enrolled in the Army, even then the hidden constitutional / metabolic disorder could have shown its symptoms over a period of time.

5. The respondents would further aver that the contention of the applicant that his health suffered due to the stress and strain in military service, food habits and strenuous training is baseless as no such case with similar nature of disabilities has come to the notice from any compatriot trainees from any part of the country undergoing similar training.

6. In the instant case, the respondents would contend that the opinion of the medical authorities has primacy and would quote the Hon'ble Apex Court's judgment of 20 August 2009 in SLP (C) No. 23727/2008 titled "Secretary, Ministry of Defence and others vs Ex-Spr (Late) Damodaran AV.

7. In view of the foregoing and the fact that the disability was congenital in nature and also owing to the fact that the Medical Board has considered it as neither attributable to nor aggravated by military service, the respondents have prayed that this Tribunal may dismiss the case, being devoid of any merit or substance.

8. We have heard the arguments of Mr.M.K.Sikdar, learned counsel for the applicant and Mr.B.Shantha Kumar, Learned Senior Panel Counsel assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) and also perused all the documents that were made available.

9. Flowing from the arguments of both counsels, the following points emerge for consideration:

(a) *Whether challenging the impugned order is sustainable?*

(b) *Whether the disability caused is attributable to or aggravated by military service?*

(c) *What relief, if any, is available to the applicant?*

10. We have critically examined the medical and other documents that were made available.

Points (1) & (2): It is not disputed that at the time of the enrolment, the applicant was medically examined and found fit. However, in the course of his basic military training, he was found to be physically weak and in January 2003, was referred to Command Hospital (Air Force), Bangalore for further medical examination. Though in the initial examination by the Medical Specialist no abnormality was detected; however, due to persistent complaint, he was put through Ultra Sound tests in the abdominal

region and was found to be having 'multiple cysts. The CECT of the abdomen also showed continuous multiple cysts distributed both in cortex and medulla and the doctor had opined that the disease is consistent with 'Autosomal Dominant Polycystic Kidney Disease'. He opined that it is a congenital disease and recommended that he is unfit to be retained in service and to be invalided out of service owing to his poor medical condition under Category P5 of SHAPE. The doctor had also recommended that since it is a congenital disease, the parents and siblings of the applicant should get surveillance of Abdomen (USS) done. He also cautioned the applicant to take prompt treatment for any UTI and to go through annual review by a Physician/Nephrologist. The Invaliding Medical Board was of the opinion that the disability may have been present in a quiescent state at the time of enrolment and, therefore, could not be detected by the Recruiting Medical Officer and had manifested itself during the course of training and, therefore, the specialist was able to detect it at a later date. The Medical Board has also opined that the disease could not have been detected by the Recruiting Medical Officer at the time of initial medical examination due to limited facilities and the symptoms of the disease being very meagre. We have examined Para 74 of the Guide to Medical Officers (Military Pensions) 2002 and its amendments of 2008, in respect of Congenital diseases of kidney. These are extracted below:

*"Certain congenital diseases such as **polycystic disease of kidney**, horse-shoe kidney, duplication of collecting system escape detection at the time of enrolment and many manifest later in service as asymptomatic urinary abnormality, hypertension and frequent urinary tract infection. These cases are generally rejectable. However, aggravation due to service can be examined taking into account the stress and strain and adversity of service."* (emphasis supplied by us)

Amendment to Chapter VI of Guide to Medical Officers (Military Pensions)-2008

has this to say on the disease:

*“Certain congenital diseases such as **polycystic disease of kidney**, horse-shoe kidney, pelvic-ureteric junction obstruction (Hydronephrosis), ectopic kidney, vesico-ureteric influx, megaureter, ureterocele, retrocaval ureter, ureteral implication, and duplication of collecting system escape detection at the time of enrolment and many manifest later in service as asymptomatic urinary abnormality, hypertension and frequent urinary tract infection. Such kidneys may be easily injured in hydronephrotic or ectopically located. Aggravation shall be considered if there is trauma related to service.”* (emphasis supplied by us)

11. From the above, we note that ‘Autosomal Dominant Polycystic Kidney Disease’ is a congenital and genetic disease. Normally, during preliminary medical examination, no abdominal examination through USS is performed. It would be reasonable to assume that the said disease was dormant in the applicant and it could not be detected during the primary medical examination at the time of recruitment. To that extent, the disease cannot be attributed to service, being genetic in nature.

12. As for the aggravation is concerned, the Medical Board has also opined that the ID was not aggravated due to military service. The applicant’s counsel has disputed this fact in his submission and has averred that the applicant was under strenuous training during this period and this was a cause of aggravation. From the documents, we note that the applicant had been referred to the doctors for persistent physical weakness. The Medical Specialist, after initial physical examination had examined the kidney of the applicant to further ascertain the cause of the weakness. We also note that the haemoglobin level of

the applicant was below normal for a young adult. This makes us to come to the conclusion that the applicant would possibly have had some complication related to the kidney though it had not fully manifested itself either as hemorrhage causing internal bleeding or UTI. Being a young recruit, it is possible that either he may not have noticed it or reported it. It is well known that the training of a recruit is physically very taxing as the physical standards that are needed to be achieved are quite exacting. Therefore, the Medical Board should have considered the possibility of stress of training as a possible cause for aggravation as enunciated in paragraph 74 of the Guide to Medical Officers (Military Pensions) 2002 and should have been taken this into account. It appears that the Medical Board's opinion relied heavily on the fact that the said disease was congenital / genetic in nature, ignoring the manifest causative factors for aggravation, as discussed above. The presumption of aggravation of the said ID should have been conceded in favour of the applicant.

13. In view of the foregoing, we are inclined to agree with the counsel for the applicant that the Medical Board had erred in its opinion that the ID was not aggravated by military service. We are also favourably disposed to give the benefit of doubt to the applicant that the ID was aggravated due to military service in view of our conclusions in paragraph 12 above.

14. Point 3: Invaliding Medical Board has adjudged the degree of disability as 40% for life. We have already concluded that the disease is aggravated due to military service. Since the applicant has been invalided out of service, he is eligible for provision of broad banding of degree of disability from 40% to 50% for life, in accordance with existing provisions on the subject.

15. In fine, the O.A. is allowed. The ID “Autosomal Dominant Polycystic Kidney Disease” caused to the applicant is to be treated as aggravated by military service and the degree of disability is broad banded from 40% to 50% for life. Accordingly, the applicant is eligible for disability pension of 50% for life. However, the claim for arrears will be restricted to a period of three years prior to the date of filing of the Application. The respondents are directed to comply with the order within three months from the date of receipt of this Order. In default, an interest of 9% *per annum* is payable from that date.

16. No order as to costs.

Lt Gen K Surendra Nath
Member (Administrative)

Justice V.Periya Karuppiah
Member (Judicial)

05.11-2014

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

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To:

1. The Secretary
Govt. of India, Ministry of Defence
New Delhi – 110 011
2. The Chief of the Army Staff
Integrated HQs of MOD (Army)
Post – DHQ, New Delhi – 110 011
3. The Officer in-Charge
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Allahabad (U.P), PIN: 211 014
5. Mr.M.K.Sikdar
Mr.D.Eswara Rao
Mr.S.Biju
Counsel for the applicant.
6. Mr. B. Shanthakumar, SPC
For Respondents.
7. OIC/Legal Cell,
ATNK & K Area,
Chennai-600009.
8. Library, AFT/RB, Chennai.

Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

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

O.A. No.73 of 2014

Dated: 05.11-.2014