

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.64 of 2013

Friday, the 04th day of October, 2013

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

AND

THE HONOURABLE LT GEN ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

Ex. No.7774570 R. Jaipal CMP,
S/o. Rathina Samy,
Mela Pudupalli Village & (Post),
Keevalur Taluk,
Nagapattinam District,
Tamil Nadu.

... Applicant

By Legal Practitioner:
Mr. S. Pasupathi

Vs.

1. Union of India, rep. by its
Secretary to Government,
Ministry of Defence (Army),
New Delhi.
2. Sena Police Corps Abhilekh Karyalaya,
Corps of Military Police Records,
Pin-900493
C/o. 56 APO.
3. Provost Marshal's Office,
Adjutant General's Branch,
Integrated H.Q. of MoD (Army),
DHQ PO, New Delhi-110011.

4. The PCDA (Pension),
Grants -3 Section (Group-II),
Allahabad (UP).

... 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 praying to set aside the impugned order passed by the 2nd respondent in Letter No.7774570/NE (D.Pen) dated 22.3.2013 as arbitrary, illegal, unjust and untenable and grant service element of pension with effect from 30.9.1995, the date of discharge from service, and for costs.

2. The factual matrix of the case as stated in the application would be as follows :-

The applicant was recruited to the military service on 20.4.1985 in the trade of Military Police in the rank of Sepoy. He was discharged from service on 13.9.1995 as he was placed under low medical category 'BEEd (Psy) Permanent' on 1.9.1995, and thus he completed 10 years 05 months and 10 days in service in the army. The applicant was recommended for release

from service by Release Medical Board held in the Military Hospital, Secunderabad, for the disability 'Neurotic Depression (300-4, V67)' on 1.9.1995. However, the claim for disability pension was rejected and the appeals for the grant of disability pension were also rejected. The applicant filed a petition before High Court of Judicature, Madras in W.P.No.751/2009 and the said application was transferred to this Tribunal and was re-numbered as T.A.No.116/2010. The respondents filed a Final Status Report along with a letter of Additional Directorate General Personnel Services, Adjutant General's Branch, Integrated HQ of MoD (Army), DHQ PO, New Delhi, in letter No.B/87008/CC-137/AG/PM-5/355/2010/AG/PS-4-(Legal) dated 4.1.2011, stating that Her Excellency the President of India, sanctioned the Disability Element of Pension to the applicant at the rate of 30% for two years with effect from 30.9.1995. The said letter would also require the applicant shall make himself available for RAMB, to assess his disability within three months from the date of issue of the above said letter dated 4.1.2011. Quoting the said letter, this Tribunal passed an order that the respondents should file a compliance report by 4.4.2011 and the petitioner should appear for RAMB, as soon as the disability element of pension is disbursed to the applicant herein. Thus the applicant was brought before Review Medical Board at Military Hospital, Chennai, and his disability was assessed at 30% for the intervening period from 31.8.1997 to 23.3.2011, and at 50% for life with effect from 24.3.2011. However, the applicant was not granted with service element of pension till date. The

applicant issued a Statutory Notice on 26.10.2012 for the grant of disability service element of pension. The 2nd respondent replied that the applicant was discharged from service on 13.9.1995 (A.N.) at his own request before fulfilling the conditions of engagement under Army Rule-13(3) Item III (iv) after rendering 10 years 05 months and 11 days of service and the applicant was not entitled to service element of pension as per Rule-173 read with Rule-173A and 179 of Pension Regulations for the Army, 1961 (Part-I), since he was discharged/invalided out from service on medical grounds before the completion of his term of service. It was further reasoned that the applicant was not discharged on medical grounds/invalided out, but he was discharged at his own request. First appeal was preferred on 22.12.2012 and it was dismissed. Therefore, second appeal was preferred on 12.3.2013. The same was also dismissed on 22.3.2013. Therefore, the applicant has filed the present application seeking for setting aside the impugned order dated 22.3.2013 as arbitrary, illegal, unjust and untenable, and for the grant of service element of pension with effect from 30.9.1995. Accordingly, the application may be allowed.

3. The objections raised by the respondents in the Reply Statement would be as follows :-

The applicant was enrolled in the army on 20.4.1985 as 'Safaiwala'. He was discharged from service with effect from 30.9.1995 A.N. under Army

Rule-13(3) Item III (iv) at his request on compassionate grounds before the completion of the terms of engagement after having rendered 09 years 08 months and 22 days of service excluding 08 months and 19 days for non-qualifying service. He was in low medical category BEE (Permt) due to 'Neurotic Depression' at the time of his discharge from service. His Release Medical Board was held at Military Hospital, Secunderabad, on 1.9.1995 at the time of discharge. The said disability was assessed at 30% for two years, which was aggravated by the service in its opinion dated 1.9.1995. The claim for disability pension was submitted before PCDA (P), Allahabad, through a letter No.7774570/95/NE (D.Pen) dated 17.9.1996, and the same was rejected in their letter dated 29.11.1996 in letter No.G3/90/156/10/96 with the reason that the applicant was discharged at his own request on compassionate grounds. The letter of 1st respondent dated 18.8.2005 in B/40502/Appeal/05/AG/PS-4(Imp-II) would stipulate that the grant of disability pension/element will not be adjudicated nor any appeal from them be entertained if personnel are discharged from service at their own request. The applicant filed W.P.No.751/2009 (registered as T.A.No.116/ 2010) before this Tribunal) for the grant of Disability Pension from the date of discharge of the applicant. The said case was processed by the Government of India, Ministry of Defence, for the grant of Disability Pension and an additional sanction was accorded in letter No.B/87008/CC-137/AG/PM-5/355/2010/AG/PS-4 (Legal) dated 4.1.2011 for the grant of disability element of disability pension at 30% for two years from the date of

discharge of service. Accordingly, the applicant was granted with disability pension vide Pension Payment Order No.DE/0984/2010 dated 25.1.2011 issued by PCDA (P), Allahabad. As per the direction of this Tribunal in T.A.No.116 of 2010 dated 2.2.2011, the applicant was brought before Re-Assessment Medical Board at Military Hospital, Chennai, and his disability was assessed at 30% for the intervening period and 50% for life with effect from 24.3.2011 and sanction was accorded by the Ministry of Defence dated 6.9.2012, granting disability element to the applicant at 30% with effect from 30.9.1995 to 23.3.2011 and at 50% with effect from 24.3.2011 for life with instructions to adjust the dues already paid during the said period. A Corrigendum was issued by PCDA (P), Allahabad, in Pension Payment Order No.DE/CORR/1017/2012 dated 20.9.2012 to that effect against which a Statutory notice dated 26.10.2012 for the grant of service element was issued and the same was replied by CMP Records in its letter No.7774570/NE(D.Pen.) dated 14.11.2012 rejecting the claim. However a first appeal was preferred on 22.12.2012 for the grant of service pension and it was also replied in its letter No.7774570/NE(D.Pen) dated 19.2.2013, rejecting the claim. A second appeal was also preferred on 12.3.2013 and it was replied through CMP Records letter No.7774570/NE(D.Pen.) dated 22.3.2013. Since the applicant was discharged from service under conditions of terms of engagement under Army Rule-13(3) Item III (iv) at his own request before fulfilling the conditions of terms of engagement having rendered 09 years 08 months and 22 days of service, excluding 08 months

and 19 days of non-qualifying service, the applicant was not granted with service element of disability pension as per the existing Rules under Rule-173 read with 173A and 179 of Pension Regulations for the Army, 1961 (Part-I). The applicant should have been invalided out from service on medical grounds before completion of his term of engagement for getting service element of disability pension. Therefore, the applicant is not entitled for the service element of disability pension as sought for and the said application may, therefore, be dismissed.

4. On the above pleadings, the following points were framed for consideration in this application :-

- 1) Whether the Order of the 2nd respondent in letter No.7774570/NE (D.Pen) dated 22.3.2013 is arbitrary, illegal, unjust and untenable and is liable to be set aside ?
- 2) Whether the applicant is entitled for the grant of service element of disability pension also with effect from 30.9.1995, when the applicant was discharged from service ?
- 3) To what relief the applicant is entitled for ?

5. Heard Mr. S. Pasupathi, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel assisted by Major Suchithra Chellappan, Learned JAG Officer, appearing for the respondents.

6. The Learned Counsel for the applicant would submit in his argument that the applicant served 10 years 05 months and 10 days of service in the army after he was recruited to military service on 20.4.1985 for he was placed under low medical category 'BEE (Psy) Permanent' on 1.9.1995. He would further submit that Release Medical Board was constituted and his disability was found as 'Neurotic Depression (300-4, V 67)'. He would also submit that the applicant was advised to submit an application for premature retirement on the medical disability and, therefore, he submitted an application for premature retirement and on that basis, he was discharged from service on 30.9.1995. He would further submit that even though the applicant was discharged on medical disability, he was not granted with disability pension and, therefore, he filed a Writ Petition in W.P.No.751/2009 before High Court of Judicature, Madras, which was transferred to the file of this Tribunal and was taken on file in T.A.No.116 of 2010 and in the meanwhile, the respondents have come forward to grant disability pension from the date of his discharge, but with disability element alone and, therefore, the application was disposed accordingly. The applicant had asked

for the service element of disability pension also, but it was refused by the respondents since the applicant was discharged on premature retirement on compassionate ground. He would also submit that the said attitude of the respondents is against the provisions of Rule-173 read with 173A and 179 of Pension Regulations for the Army, 1961 (Part-I). He would also quote the Judgement of this Tribunal made in **Sankariah's case** in **O.A.No.73 of 2012** dated 14.3.2013, in which the disability pension was ordered for the applicant therein, with disability element and service element even though he was discharged on compassionate ground. He would further refer to a Judgement of Delhi High Court made in **CW. 2967/1989** in between **Mahavir Singh Narwal Vs. Union of India and others**, for the same position of law. He would also cite a Judgement of this Tribunal made in O.A.No.1 of 2010 between **S. Sankariah Vs. Union of India and others**, dated 22.6.2010 for the same principle. He would further submit that withholding of the service element of disability pension and the reason attributed for such withholding by the respondents are not sustainable in law. He would, therefore, request us to set aside the rejection order of the respondents and to grant service element of disability pension along with disability element of pension throughout and thus the application may be allowed.

7. The Learned Senior Panel Counsel would submit in his argument that the applicant was no doubt enrolled in the army on 20.4.1985 as 'Safaiwala' and he was discharged from service with effect from 30.9.1995 A.N. under Army Rule-13(3) Item III (iv) at his own request on compassionate ground before completion of his term of engagement. He would further submit that the applicant had rendered 09 years 08 months and 22 days of service after excluding 08 months and 19 days for non-qualifying service. He would also submit that the applicant was categorised in 'BEE (Psy) Permanent' due to 'Neurotic Depression' by Categorisation Medical Board and he was recommended for release from service by the Release Medical Board held at Military Hospital, Secunderabad on 1.9.1995 for the disability of Neurotic Depression, but however, he was discharged at his own request on compassionate ground. He would further submit that the applicant was granted with disability pension by the respondents with the disability element alone from the date of his discharge when he preferred a petition in W.P.No.751 of 2009 before Hon'ble High Court of Madras, which was later transferred to this Tribunal and re-numbered as T.A.No.116 of 2010, and the said grant of disability pension with disability element alone was recorded and the applicant was directed to appear before the Re-Assessment Medical Board to assess the subsequent disability and to calculate the disability pension. He would also submit that the Re-Assessment Medical Board was constituted and the applicant was examined and was assessed at 30% during the intervening period and 50% for life with effect from 24.3.2011

and sanction was accorded to the applicant to that effect for the disability pension with disability element alone. He would also submit that the applicant cannot agitate the refusal of service element when he has not challenged the Order passed by this Tribunal approving the sanction letter issued by the respondents before this Tribunal in the earlier case. He would also submit that the applicant did not complete even 10 years of service so as to get service element of pension and, therefore, the requisition as well as the appeal preferred by the applicant through his Advocate were dismissed and therefore, there is no need to set aside the order passed by the 2nd respondent in rejecting the grant of service element. Therefore, he would request us to dismiss the application.

8. We have given anxious thoughts to the arguments advanced on either side. We have also perused the records as well as the earlier Judgements involved in this case.

9. **Points 1 & 2:** The indisputable facts would be that the applicant was enrolled in the army on 20.4.1985 as 'Safaiwala' and he was discharged from service with effect from 30.9.1995 A.N. at his own request on compassionate ground under Army Rule-13(3) Item III (iv) of Army Rules, 1954, after he was placed in low medical category by Categorisation Medical Board as well as by the Release Medical Board, recommended his release

from service. It is further admitted by both parties that the applicant sought for the grant of disability pension by filing a Writ Petition before High Court of Madras in W.P.No.751 of 2009, which was transferred to this Tribunal and was taken on file in T.A.No.116 of 2010 and at the time of its disposal, the respondents had come forward with a sanction letter dated 4.1.2011 from Government granting disability pension to the applicant with disability element alone and the applicant was also directed to appear before the Re-Assessment Medical Board for ascertaining the disability prevailed after his discharge and this Tribunal had also passed an Order in terms of the said letter, on 2.2.2011. After passing of the said order, Re-Assessment Medical Board was convened and the applicant was examined and his disability was assessed at 50% for life and the respondents are paying the disability pension with disability element at 50% with effect from 24.3.2011, after adjusting the earlier payment made towards the excess. Challenging the said non-grant of service element throughout, the present application has been filed by the applicant since his request through his Counsel was rejected by the PCDA (P), Allahabad, in the first and second appeals.

10. Now the point for consideration is whether the applicant is entitled for service element of disability pension all along with disability element throughout from the date of discharge as per the disability assessment. However, the respondents would contend that the applicant is not entitled

for service element of disability pension since he was discharged from service at his own request on compassionate ground. We have already seen that there is no dispute in the case of the disability of the applicant, namely 'Neurotic Depression', which categorised the applicant in low medical category by Categorisation Medical Board and since there was no alternative employment for the applicant, a Release Medical Board was constituted and it also gave its opinion that the applicant was fit to be released from service. The Release Medical Board had also opined that the said disability 'Neurotic Depression' even though not attributable to service was aggravated due to stress and strain of service condition. It also opines that the effects of such aggravation still persist and it would continue for a material period. On the said ground, he was recommended for a discharge from service on 1.9.1995 by the Release Medical Board. It is a settled law that the Medical Board's opinion shall be given primacy and credence, and should be acted upon. The Judgement of Hon'ble Apex Court in **Secretary, Ministry of Defence and others Vs. A.V. Damodaran (Dead) through LRs and others**, reported in **(2009) 9 SCC 140** would clearly lay down the said principle. However, the applicant was discharged from service at his own request on compassionate ground on 30.9.1995. This position was dealt with and clarified by this Tribunal in an earlier case made in which Order was passed in O.A.No.1 of 2010 dated 22.6.2010. The relevant portion is as follows :-

"But this position has been clarified as early as in the year 2004 itself in a Judgement of the Honourable High Court of Delhi in CW.2967 of 1989 in Mahavir Singh Narwal Vs. Union of India and others, wherein the relevant observations runs as follows :-

"What is relevant is whether the mandate of Pension Regulation 173 read with Rules 1 & 2 of Appendix II has been taken into consideration or not. Merely because a person has attained discharge on compassionate ground although his disability has been acquired on account of stress and strain of military service will not be a ground to reject the claim of disability pension, it has been invalidated act in terms of Appendix II of Rule 173."

11. In the said Judgement, the Judgement of Hon'ble High Court of Delhi, in between **Mahavir Singh Narwal Vs. Union of India and others**, made in CW.2967 of 1989, has been referred to. Furthermore, Rule-4 of Entitlement Rules would also come to the rescue of the applicant. Para-4 of the Entitlement Rules runs thus :-

"4. Invaliding from service is a necessary condition for grant of a disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as

invalidated from service. JCO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged from the completion of their engagement will be deemed to have been invalidated out of service."

12. According to the said rule, whenever an individual was in lower medical category than in which he was recruited at the time of his release under Release Regulations, he would be treated as invalidated from service. In this case, it is an admitted fact that the applicant was placed in low medical category 'BEE (Psy) Permanent' and a Release Medical Board was constituted and it also recommended for his release. Therefore, we could see that the release and discharge of the applicant recommended under Release Regulations would be amounting to an invalidation. It is also a fact that the service tenure of the applicant was cut due to his placement in low medical category and his release was recommended by the Release Medical Board. The only thing done by the applicant was that he had opted for premature discharge without waiting for the discharge on the basis of the opinion of Release Medical Board. It has been clearly laid down by Delhi High Court in the above referred Judgement that merely a person attained

discharge on compassionate ground although his disability has been acquired on account of stress and strain of military service will not be a ground to reject the claim of disability pension under Rule-173 of Pension Regulations for the Army, 1961 (Part-I). The said principle is also applicable to the applicant herein and he should have been considered for the grant of disability pension with both elements at the time of his discharge. However, the respondents have come for a partial rescue of the applicant by granting disability pension from the date of discharge, but with disability element alone, omitting the service element, a vital constituent of the disability pension. Even though the respondents have challenged the tenure of service of the applicant was not 10 years 05 months and 11 days, it was admitted by the respondents in the letter of rejection of First appeal dated 19.2.2013 produced as Annexure R-XVI, that the applicant had rendered 10 years 05 months and 11 days of service. In the said circumstances, the service tenure of the applicant should have been in accordance with the admission in Annexure R-XVI as 10 years 05 months and 11 days.

13. For the purpose of finding out whether the applicant is entitled for disability pension with disability element and service element, the ingredients of Paras-173 and 174 of Pension Regulations for the Army, 1961 (Part-I), are to be extracted :-

"173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.

174. Service rendered in aid of the civil power shall be treated as military service for the purpose of disability pensionary awards."

14. In the aforesaid provisions, it is made clear that the disability pension consists of service element and disability element and a person is entitled to both elements in a disability pension. The withholding of service element of the disability pension is not available for the respondents on the date of his discharge from service, namely 30.9.1995. Therefore, the applicant was entitled for service element of pension also, along with disability element towards the disability pension granted to him, on the date of discharge (i.e.) 30.9.1995.

15. A faint attempt has been made by the Learned Senior Panel Counsel that the applicant did not raise his little finger regarding the payment of service element at the time of passing an Order by this Tribunal in T.A.No.116 of 2010 on 22.6.2010 regarding the non-payment of service element and, therefore, he is estopped from claiming the service element from the respondents. We do not find any merit in the argument of the Learned Senior Panel Counsel as there could be no estoppel against a statutory right of the applicant for the grant of service element. As per paragraphs-173 and 173A of Pension Regulations for the Army, 1961 (Part-I) coupled with Rule-4 of Entitlement Rules, the applicant is entitled for disability pension from the date of his discharge and it was notionally accepted for the grant of disability pension by the respondents by issuing an Order dated 4.1.2011. In the said circumstances, the service element which is part and parcel of the disability pension, cannot be withheld in the case of the applicant since he was discharged on 30.9.1995. Therefore, we are of the considered view that the rejection of service element in the disability pension as sought for by the applicant in the impugned order are liable to be set aside and the applicant is thus entitled for service element of disability pension also for the relevant period the disability pension was granted to the applicant by the respondents with disability element alone in its letter dated 4.1.2011. Accordingly, both the points are decided in favour of the applicant.

16. **Point No.3:** In view of our discussion had in the earlier paragraphs and the decision reached therein, to the effect that the applicant is entitled for service element of pension proportionate to the quantum of disability element as per rules, the order granting disability pension with disability element only passed by the respondents dated 4.1.2011, is liable to be modified to that extent. The application filed by the applicant seeking for the said relief, therefore, is liable to be allowed.

17. In fine, the application filed by the applicant is allowed. The respondents are directed to calculate the service element of disability pension as indicated above and to pass suitable Pension Payment Order to that effect within a period of three months. In default to pay the said arrears of money or to comply with the order, the respondents shall pay the said arrears sum with interest at 12% p.a. from today till the date of payment. No order as to costs.

Sd/-
LT GEN ANAND MOHAN VERMA
(MEMBER-ADMINISTRATIVE)

Sd/-
JUSTICE V.PERIYA KARUPPIAH
(MEMBER-JUDICIAL)

04.10.2013
(True Copy)

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

Internet : Yes / No
Internet : Yes / No

To,

1. Secretary to Government,
Ministry of Defence (Army),
New Delhi.
2. Sena Police Corps Abhilekh Karyalaya,
Corps of Military Police Records,
Pin-900493
C/o. 56 APO.
3. Provost Marshal's Office,
Adjutant General's Branch,
Integrated H.Q. of MoD (Army),
DHQ PO, New Delhi-110011.
4. The PCDA (Pension),
Grants -3 Section (Group-II),
Allahabad (UP).
5. Mr. S. Pasupathi,
Counsel for applicant.
6. Mr. B. Shanthakumar, SPC
Counsel for respondents.
7. OIC, Legal Cell (Army),
ATNK& K Area HQ,
Chennai-9.
8. Library, AFT, Chennai.

**HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)**

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