

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.43 of 2018

Tuesday, the 16th day October, 2018

THE HONOURABLE JUSTICE V.S.RAVI, MEMBER(J)

AND

THE HONOURABLE LT GEN C.A.KRISHNAN, MEMBER (A)

S.No.1365685-M

Ex Sep K.Murugesan, aged 58 years,
Son of Late Kannan,
Killmuttkur village and Post
Katpadi Taluk, Vellore district,
Tamilnadu 632 204

... Applicant

By Legal Practitioner: M/s. M.K.Sikdar & AQ Choudhury

vs.

1. Union of India represented by
The Secretary, Govt of India,
Ministry of Defence,
South Block, New Delhi 110 011

2. Addl Dte Gen Personnel Service
AGs Branch/PS-4 (Imp-II)
Integrated HQ of MoD (Army)
Pin 900256 c/o 56 APO

3. The Office in Charge
Raksha Suraksha Corp Abhilekh
DSC Records
Pin 901277 c/o 56 APO

4. The Principal Controller of Defence Accounts
(Pension), Draupadi Ghat,
Allahabad, UP 211 014

... Respondents

By : Shri K.Ramanamoorthy, Central Government Counsel

ORDER

LT GEN C A KRISHNAN, MEMBER (A)

1. The Original Application has been filed by the applicant to quash the impugned order passed by the 3rd respondent in No.Pen/DP-Pet/1365685/SR dated 17.11.2017, declare the disability of the applicant as aggravated by military service and to grant disability pension @ 20% for life with the benefit of rounding off from 20% to 50% w.e.f.1.9.2011, the day after discharge from DSC service, with all consequential benefits.

2. The learned counsel for the applicant submits that the applicant was enrolled in the Indian Army on 5.12.1977 as Sepoy and was discharged on 31.12.1999 after 22 years and 27 days of service, on fulfilling the conditions of service in medical category SHAPE-I and is in receipt of service pension. He was re-enrolled in Defence Security Corps (DSC) on 27.8.2001. During his service in DSC, he was diagnosed with the disease "Type-II Diabetes Mellitus". The Release Medical Board held on 15.1.2011 declared his invaliding disease neither attributable to nor aggravated by military service and assessed the disability @ 15 to 19%. The learned counsel for the applicant submits that the applicant was not allowed to continue in service for 15 years in DSC to earn 2nd service pension and was also denied disability pension. He further submits that the applicant filed mandatory 1st and 2nd appeals, but the 3rd respondent refused to entertain the appeals. The representation for considering RSMB was also not replied. The learned counsel submits that the applicant is

eligible for disability pension as per Entitlement Rules for Casualty Pensionary Awards, 1982 and prays for grant of disability pension.

3. The learned counsel for the respondents while not disputing the service particulars of the applicant, submits that the applicant is in receipt of service pension for the service rendered in Indian Army. He further submits that the applicant is claiming disability pension on the ground that he was invalided from DSC service on 31.8.2011 due to a disease "Type-II Diabetes Mellitus". He disputed the claim of the applicant that he was invalided from service and submits that the applicant was discharged from service on completion of his initial terms of engagement for 10 years on 31.8.2011 and further extension was not granted since the applicant was not meeting the medical criteria. The applicant's first appeal was rejected with an advice to prefer second appeal to Second Appellate Committee on disability pension within six months from the date of communication. The applicant preferred second appeal after more than five years and the same was not entertained due to policy constraints. The respondents pray that OA filed by the applicant does not merit consideration and therefore be dismissed.

4. Heard Shri M.K.Sikdar, learned counsel appearing for the applicant and Shri K.Ramanamoorthy, learned Central Government Counsel appearing for the respondents and also perused the documents placed on record.

5. It is not disputed that the applicant was enrolled into the Indian Army on 5.12.1977, discharged from service 31.12.1999 and is in receipt of service pension. He was re-enrolled in DSC service on 27.8.2001 and was discharged on 31.8.2011.

6. The service particulars of the individual in DSC service placed in Annexure-A4 clearly indicates that he was discharged from DSC service on 31.8.2011, on completion of terms of engagement, due to being in LMC. It is seen that the terms of engagement of the applicant was for an initial term of engagement of 10 years extendable by 5 years up to 57 years of age, whichever is earlier. The applicant was diagnosed with Type-II 'Diabetes Mellitus' on 05.04.2008 and was placed in Medical category S1H1A1P2 (P)E1 by the Medical Board on 29.09.2009. At the time of discharge from DSC, the applicant was brought before the Resurvey Medical Board on 15.1.2011 which diagnosed the disease as "Diabetes Mellitus Type-II" and assessed the disability @ 15% to 19% for life.

7. It is not disputed that the applicant on completion of his service in the Army re-enrolled in the DSC for an initial term of engagement of 10 years. The terms and conditions of enrolment included extension of 5 years subject to suitability and willingness.

8. It is seen that, in accordance with the policy laid down vide MoD letter No.65370/DSC-2/390 C/D(GS-IV)94 dated 16.12.1985 as amended vide MoD Circular No.65730/DSC-22/295/F(MOV)/94 dated 03.02.1994

and consequent to the implementation of V Central Pay Commission, the initial period of engagement in DSC will be for a period of 10 years service, extendable by 5 years at a time subject to attainment of a maximum of 57 years of age for superannuation. The applicant was discharged from service on completion of his initial terms of engagement on 31.8.2011. The applicant was not granted further extension as he was not meeting medical criteria for extension. Therefore, we find that the applicant was not eligible for grant of extension after completion of the initial term of 10 years and was discharged from service and that he was not invalidated on medical grounds. We also find that in its order dated 2.3.2017, the Hon'ble AFT, Kochi Bench in a similar case in O.A.No.123 of 2016 observed "we would also like to observe that extension of service after the initial period of engagement is subject to meeting specified criteria where, apart from the willingness of the applicant, the requirements of service, such as medical categorisation, discipline criteria and performance of the individual are also to be looked into. Therefore, extension of service is not a matter of right. As observed, the applicant was not granted extension as he had not met the required medical criteria."

9. Regarding applicant's claim for disability pension, consequent to the Hon'ble Supreme Court order in *Union of India Vs Ram Avtar case* filed in Civil Appeal No.418 of 2012, personnel who retire/are discharged on attaining age or completion of terms of service, if found suffering from

disability of 20% or more which is attributable to/aggravated by service are covered by the judgements and will be entitled to disability pension. However, we find that the applicant's disability was assessed below 20% for life by the Release Medical Board and hence he cannot find remedy in this order. Searching for further remedy which may come to the rescue of the applicant we examine his case in the light of the Hon'ble Supreme Court judgement in *Sukhvinder Singh Vs Union of India & others reported in (2014) 14 SCC 364*, where it was ruled that "wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent." However, we find that the applicant cannot find remedy in this judgement also as he was not invalided but was discharged on completion of initial term of 10 years service.

10. In view of the foregoing, we do not find any merit in the claim of the applicant that he is entitled to disability pension. In result, the OA is dismissed. No cost.

LT GEN C A KRISHNAN
MEMBER (A)

JUSTICE V.S.RAVI
MEMBER (J)

16.10.2018

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To

1. M/s.M.K.Sikdar & AQ Chowdhury, counsel for applicant
2. Shri K.Ramanamoorthy, Central Government Counsel for respondents
3. OIC, Legal Cell, Dakshin Bharat Area, Chennai
4. Library, AFT, RB, Chennai

**HON'BLE JUSTICE V.S.RAVI
(MEMBER-J)
AND
HON'BLE LT GEN C.A.KRISHNAN
(MEMBER-A)**

O.A.No.43 of 2018

Dated:16.10.2018

