

ARMED FORCES TRIBUNAL REGIONAL BENCH CHENNAI

O.A.No. 08 of 2012

Thursday, the 13th day of September 2012.

**THE HON'BLE JUSTICE SHRIKANT THRIPATHI
MEMBER (JUDICIAL)**

AND

**THE HON'BLE LT.GEN.(RETD) ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)**

K. Ananda Rao

Ex.Nk. Service No. 6349521

S/o. Narappa,

H.No. 5-1-120, Bupesh Nagar,

JJ Nagar Post Office,

R R District – 500 087

. Applicant.

Legal Practitioner. Mrs. Tonifia Miranda.

Vs.

1. Union of India rep by its
Chief Record Officer,
ASC Records (South)
Bangalore- 07.
2. The Principal Controller of Defence Accounts (P)
Draupathighat, Allahabad 211 014.
3. Directorate General of Supplies & Transport
Quartermaster General's Branch, Room No. 320,
Integrated HQ of MoD (Army), A- Wing
DHQ P.O. New Delhi – 110 105.

ORDER:

1. Heard Mrs. Tonifia Miranda, the Counsel for the Applicant and Shri B. Shanthakumar, SPC, the Government Counsel for the Respondents and perused the record.

2. The applicant K. Ananda Rao, an Ex. Naik, Service No. 6349521 has filed this petition under Section 14 of the Armed Forces Tribunal Act for the disability

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pension with effect from 31.08.1975 being the date of his discharge from the Army along with interest.

3. It is not in dispute that the applicant was enrolled in the rolls of the Army Supply Corps, a supply department of the Indian Army, on 27.07.1957 and was discharged from service on 31.08.1975 on fulfilling the conditions of enrolment. He has already been granted service pension vide PPO.No. S/17569/75. The applicant had participated in 1971 Indo-Pakistan War and sustained injuries due to a bomb blast and was operated upon in the Base Hospital, Calcutta. At the time of discharge, the Release Medical Board placed the applicant under Low Medical Category and assessed the disability to the extent of 20% for two years only and held the same to be attributable to Military service. More so, the applicant was awarded wound medal vide Part II Order No. SUP/58/63/73. The Invalided Medical Board very clearly opined that the disability was attributable to Military Service and recommended his claim for the disability pension which was rejected by the Principal Controller of Defence Accounts (Pension) Allahabad (the respondent No.2) in the year 1980. The learned Counsel for the applicant submitted that the applicant had been pursuing his disability pension matter with the authorities but no positive response was shown by them. The applicant ultimately served the legal notice dated 09.07.2011 on the respondents, who on receipt of the legal notice and opined that the Principal Controller of Defence Accounts, Allahabad was not agreeable to grant the disability pension to the applicant, therefore, his case was not accepted. While answering the legal notice, Lt. Col. Veerendra Singh, Chief Record Officer for OIC Records stated in para 6 as follows:-

“In the first sight, the case appears to be genuine for grant of War Injury Pension. Also Integrated HQ of MoD (Army) letter No. B/39022/Misc/AG/PS-4(L)/BC dated 25.Apr 2011 had mentioned that Quote **“institution of MAP in PCDA (P) has now been abolished, since 2004. Till such time it was in vogue, all med opinions of the IMB/RMB that were recd in PCDA(P) for claims were adjudicated by the MAP (Medical Advisor Pensions) who were considered the final auth to decide on final admissibility of disability pension. These alterations in the findings of IMB/RMB by MAP (PCDA(P) without having physically examined the indl. do not stand to the scrutiny of law and in numerous judgments Hon’ble Supreme Court has ruled that the Medical Board which has physically examined should be given due weightage, value and credence. It has been noticed that despite a settled legal posn such cases are still being contested on behalf of the UOI, which is infructuous and causes undue financial losses to both petitioner as well as the UOI”**.

4. The respondents have filed counter affidavit admitting that the Medical Board opined that the applicant had sustained injury in an enemy action during Indo-Pak war in 1971, which was attributable to Military Service. The Medical Board further opined that the disability was of 20% for two years. But while stating so in the counter affidavit, the respondents took the defence that the Principal Controller of Defence Accounts (Pensions) Allahabad, after examination of the applicant’s case found that the disability was neither attributable to nor aggravated by the Military service, therefore, the applicant was not entitled to the disability pension.

5. The learned counsel for the applicant submitted that the applicant had sustained war injury in Indo-Pak war 1971 due to a Bomb-blast and the Medical Board assessed his disability to the extent of 20% for two years, therefore, the applicant was entitled to the disability pension. The learned counsel further submitted that the opinion of the Principal Controller of Defence Accounts (Pensions), Allahabad being based on no medical opinion, had no relevance. It was next submitted that the disability pension was admissible to the applicant atleast for two years, but it has also not been paid. The learned counsel for respondents on the other hand submitted that the disability pension for two years from 31.08.1975 could

not be granted by this Tribunal in view of the fact that petition to grant any relief exceeding three years prior to the institution of the Armed Forces Tribunal was not maintainable. It was also submitted that at the most the applicant may be required to appear before the Review Medical Board, and if the Review Medical Board comes to the conclusion that the disability of 20% or more still subsists, the applicant may claim the disability pension otherwise not.

6. We have considered the rival submissions as also the relevant documents on record. The invaliding Medical Board clearly opined that the applicant had sustained war injury in the Indo-Pak war which was attributable to the Military Service. Accordingly the Medical Board assessed his disability to the extent of 20% for two years. Therefore we fail to understand as to how the Principal Controller of Defence Accounts (Pensions) Allahabad came to the opinion that the disability was not attributable to Military Service, especially when there was no other medical opinion with regard to the injury of the applicant. Therefore the respondents ought to have sanctioned disability pension to the applicant to the extent of 20% disability for two years but they have rejected his case in toto without there being any justification to do so.

7. In view of the aforesaid, it is evident that the applicant was entitled to 20% disability pension for two years from 31st August 1975. To this extent the petitioner's claim has much substance. But the power of the Tribunal to grant any such relief to the applicant from 1st September 1975 to 31st August 1977 was seriously disputed by the learned counsel for the respondents, who submitted that the only a claim based on the cause of action which accrued during the period of three years immediately preceding the date on which jurisdiction, power and authority of the Tribunal became exercisable, could be brought before the Tribunal. In support of his submission, the learned counsel for the respondents referred to the provisions of

Section 22(1) (c) of the AFT Act, 2007 and also placed reliance upon Union of India and others Vs. Tarsem Singh (2008) 8 SCC 648, in which the Supreme Court restricted the relief of three years prior to the date of filing of the Writ Petition. In our view, the equity and Justice must prevail over technicalities. The Medical Board found the applicant's disability as attributable to Military Service as he had sustained the injury in the Indo-Pak War 1971 and had recommended his case for the disability pension but P.C.D.A (Pension) Allahabad did not agree to the proposal. The applicant had been running from the Pillar to the Post with no fruitful result, therefore, denial of Disability Pension for two years would amount to grave injustice to the applicant. The Tarsem Singh's case has not laid down any straight-jacket formula. In appropriate cases relief can be granted even beyond the aforesaid period of three years if the justice so requires. It appears that due to this reason the Apex Court used the term "normally" while propounding the aforesaid principles. In other words, there can be a departure of the said principle in appropriate cases. Therefore, the dictum of Tarsem Singh's case is not of any help to the Respondents.

8. So far as the question of continuance of disability after expiry of the aforesaid period of two years is concerned, it is not possible to record any specific finding in view of the fact that no Review Medical Board was held after the discharge of the applicant from the Army. Therefore the applicant has to appear before the Review Medical Board on the appointed date. If the Review Medical Board forms the opinion that the disability of the applicant still subsists and the same is 20% or more, in that eventuality, it will be open to the applicant to set up a claim before the respondents for the disability pension.

9. For the reasons stated above, the application is partly allowed. The respondents are directed to make payment of 20% disability pension to the applicant

for a period of two years to be computed from 1.09.1975 within 03 months from today failing the amount of arrears of the disability pension will carry a simple interest at the rate of 7% per annum to be paid by the respondents to the applicant. The Respondents are further directed to hold a Review Medical Board for the medical examination of the applicant, which shall be held within two months from today. The respondents shall inform in writing to the applicant by Registered Post with regard to the date, time and place of the proceedings of the Review Medical Board so as to enable him to appear before the Review Medical Board on the appointed date and time. If the Review Medical Board forms the opinion that the disability of the applicant still subsists and it is 20% or more, the applicant's request for the disability pension for further period may be given due consideration by the respondents in accordance with law.

10. Costs easy. Inform.

Sd/-
JUSTICE SHRIKANT TRIPATHI
(MEMBER-JUDICIAL)

Sd/-
Lt. GEN (RETD) ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

13.9.2012
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To

1. The Union of India rep by its Chief Record Officer,
ASC Records (South), Bangalore.
2. The Principal Controller of Defence Accounts (Pension)
Deaupathighat, Allahabad, UP- 211 014.
3. Directorate General of Supplies & Transport
Quartermaster General's Branch, Room No.30,
Integrated HQ of MoD (Army), A-Wing,
DHQ PO, New Delhi- 110 105.
4. Mrs. Tonifia Miranda, Advocate for the applicant.
5. Mr. B. Shanthakumar, SPC, Counsel for Respondents.
6. OIC, Legal Cell, HQ ATNK & K. Area, Chennai.9
7. Library, AFT, RBC.

**HONOURABLE JUSTICE
SHRIKANT TRIPATHI
(MEMBER-JUDICIAL)**

AND

**HONOURABLE LT GEN (RETD)
ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)**

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