

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.51 of 2013

Tuesday, the 10th day of September, 2013

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

AND

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

Service No.673624-K,
Rank –Ex–Sgt, Name -K. Murali, aged about 52 years,
Son of – Late D.C. Kesavan,
No.2/171 (New No.4/285), MudalayAndavan Nagar,
Agarmel, Nazarathpet-Post, Poonamallee,
Chennai-600 123.

... Applicant

By Legal Practitioners:
M/s. M.K. Sikdar & S. Biju

Vs.

1. Union of India,
Through – The Chief of the Air Staff,
Air Headquarters, Vayu Bhavan,
New Delhi-1100106.
2. The Air Officer Commanding
Air Force Record Office,
Subroto Park,
New Delhi-110 010.

... Respondents

By Mr. B. Shanthakumar, SPC

ORDER

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

1. This application has been filed by the applicant seeking to produce the records and findings of the Condonation Board dated 17.12.1999 and the impugned Order No.Air HQ/40651/12/11/PA(CPC) dated 30th/31st April, 2012, passed by the 1st respondent and to quash and direct the respondents to promote the applicant retrospectively to the rank of JWO at par with his batchmates with all consequential benefits with interest and pass such other further orders.

2. At the time of admission, Mr. M.K. Sikdar, the Learned Counsel for the applicant made an endorsement to the effect that the challenge regarding the impugned Order dated 17.12.1999 was not pressed and the applicant is pressing the prayers in respect of the impugned Order dated 30/31stApril, 2012.

3. The applicant in his application would state as follows :-

The applicant was enrolled in Indian Air Force on 31.10.1981 in the trade of Radar Fitter and discharged from service on 1.11.2001 in Low

Medical Category CAT CEE (P) which is attributable to military service. The applicant is drawing service pension with 20% disability. He was promoted to the rank of Sergeant on 1.2.1992, but denied promotion for Junior Warrant Officer (JWO) on the reason that he was in Low Medical Category CAT CEE (P). The applicant submits that he passed all the exams and earned superior ACRs for promotion to the rank of JWO. His name appeared in Sl.No.105 in the JWO Promotion Panel 1999-2000. He was superseded by his juniors with effect from 1.2.2000 as the applicant was not recommended to the rank of JWO by the Condonation Board held on 17.12.1999. The said Condonation Board dated 17.12.1999 recommended only 06 airmen out of 25 for promotion. The applicant was arbitrarily rejected from the consideration of promotion quoting the reason that he was placed under Low Medical Category. The applicant applied for reconsidering him for promotion to the rank of JWO, on 20.1.2000 as per the promotion policy of 1995. Again, on 21.3.2000, he represented his case for considering him, but it was of no avail. The further representation dated 28.4.2000, was also not fruitful. The applicant filed a Writ in W.P.No.5071 of 2000 before the High Court of Judicature at Allahabad, challenging his non-promotion to the rank of JWO, which was transferred to Armed Forces Tribunal, Regional Bench at Lucknow, and was re-numbered as TAno.1440 of 2010. Subsequently, it was transferred to this Bench and re-numbered as AT No.1 of 2011. On 19.1.2012, the said application was disposed of "dismissed as withdrawn

with a liberty to challenge the opinion of the Condonation Board dated 17.12.1999 before the appropriate authority, if so advised.” The applicant had applied on 27.1.2012 for re-constitution of Condonation Board as per the direction of this Tribunal and seeking promotion of the applicant to the rank of JWO, notionally. But the said application dated 27.1.2012 was rejected by the 1st respondent in its impugned Order No. Air HQ/ 40651/ 12/ 11/ PA (CPC) dated 30th/31st April, 2012. The said impugned order passed by the 1st respondent is contrary to the direction given by this Tribunal in its earlier Order dated 19.1.2012. The reasons stated in the impugned order are not correct since the 1st respondent is obliged to comply with the directions of the Order of this Tribunal dated 19.1.2012 passed in A.T.No.1 of 2011. By re-constituting the Condonation Board as per the direction of this Tribunal, the respondents ought to have considered the promotion of the applicant to the rank of JWO notionally and to give the benefits thereon. Therefore, the applicant requests that the restricted prayers be allowed and the application be ordered to that extent.

4. The objections of the respondents would be that the applicant was enrolled in Indian Air Force in medical category 'AYE' vide primary medical examination (AFMSF-2) dated 8.9.1981. He sustained injury to his back on 3.9.1992 while he was sitting on a four feet high wall. He underwent Anterior Fusion of C5-6 on 15.10.1992. He was diagnosed as a case of

Dislocation C5-6 (Optd) and was placed in low medical category CEE (P) vide Medical Board proceedings (AFMSF-15) dated 6.4.1993. The disability was considered as attributable to service vide Injury Report dated 12.2.1993. He was reviewed periodically and was placed in medical category CEE (P). Subsequently, the applicant was found to have raised his blood sugar level. The Classified Specialist at Command Hospital, Lucknow, diagnosed his case as NIDDM and the applicant was recommended to be placed in medical category CEE (Temp) for 6/12 years. He was placed in low medical category CEE (T-24) composite for both the disabilities by the Medical Board Proceedings (AFMSF-15) dated 11.8.1997 with restrictions 'Not to bend forward and not to lift heavy objects over head.' On subsequent review, he was recommended to upgrade to medical category BEE (T-24) for the disability NIDDM and to continue in medical category CEE (P) for disability of dislocation C5-6 (OPTD). He was placed in medical category CEE (T-24) composite for both disabilities vide Medical Board Proceedings dated 13.2.1998 with the said restrictions. During August, 1998, review was done and the applicant was recommended to the same level as done in February. Thus he was recommended for sedentary duties only and not to lift heavy weight or bend forward suddenly vide Medical Board proceedings dated 10.8.1998. Similar review done during April, 1999 and February, 2001, would also result in similar categories, however, with a direction to release

in the medical category CEE (P) as he was considered not fit to continue the service.

5. During December, 1999, the applicant was considered for promotion and, therefore, the Condonation Board was constituted with senior medical advisor and other specialist officer as the applicant was placed in low medical category. They did not recommend the name of the applicant since the applicant was suffering from ailments and the next higher rank may aggravate his ailment and his plea for condonation was not considered by the Condonation Board. The applicant filed a Writ before High Court of Allahabad, Lucknow Bench, which was transferred to Armed Forces Tribunal, Regional Bench, Lucknow, and in turn, it was transferred to this Bench and it was taken on file in AT No.1/2011. The said application was withdrawn with liberty to challenge the opinion of Condonation Board dated 17.12.1999. However, the applicant has filed an application dated 27.1.2012 before the authorities and the same was examined at appropriate level and since his case was considered by the Condonation Board held during December, 1999, no further action was required and the application was disposed through a speaking order by AIR HQ. Therefore, the Tribunal may be pleased to dismiss the application.

6. On the above pleadings, the following points emerged for consideration :-

- 1) Whether the impugned order dated 30/31st April, 2012 is liable to be set aside ?
- 2) Whether the applicant is entitled for the relief of promotion to the rank of JWO retrospectively at par with his batch mates with all consequential benefits ?
- 3) To what relief the applicant is entitled for ?

7. Heard Mr. M.K. Sikdar, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel, assisted by Sgt. Gyan Prakash, Air Force Station, Avadi, Chennai, appearing for the respondents.

8. The Learned Counsel for the applicant would submit in his argument that the applicant challenged the Condonation Board held on 17.12.1999 and for the promotion to the rank of JWO and filed a Writ Petition before the High Court of Allahabad, Lucknow, in W.P.No.5071 of 2000, and the said Writ Petition was transferred to the file of Armed Forces Tribunal, Regional Bench, Lucknow, and was re-numbered as TA No.1440 of 2010 and subsequently to the file of AFT, Regional Bench, Chennai, which was re-numbered as AT No.1 of 2011. He would further submit that this Tribunal

had come to conclusion of issuing a direction to re-constitute a Condonation Board on the application to be submitted by the applicant and the application was thus dismissed as withdrawn with liberty to challenge the opinion of the Condonation Board dated 17.12.1999 before the appropriate forum. However, the respondents did not accept the verdict of this Tribunal passed on 19.1.2012 in respect of the re-constitution of Condonation Board to consider the grievance of the applicant in the light of the Order passed therein, but rejected the application in the impugned order dated 30/31-4-2012. He would also submit that the reasons assigned for rejection of the request of the applicant for re-constitution of Condonation Board cannot be sustained because this Tribunal had clearly directed to constitute a Condonation Board on the application of the applicant in para-7 of the Order. He would further submit that the reason that the application was dismissed as withdrawn with liberty to file an application before the appropriate forum will not in any way take away the direction issued by this Tribunal against the respondents. He would further submit that the applicant ought to have been notionally promoted to the rank of JWO along with his batch mates after re-considering the applicant's case by a Condonation Board, to be re-constituted by the respondents. Therefore, he would request us to issue a direction to the 1st respondent to act in accordance with the direction of the earlier Bench made in para-7 of the Order dated 19.1.2012 made in A.T. No.1 of 2011. He would further submit that the said direction was disobeyed

by the 1st respondent and, therefore, it has become necessary to direct the respondent to proceed with the constitution of Condonation Board and to do its work as directed by the earlier Bench in para-7 of the Order dated 19.1.2012 and also to promote the applicant as requested in the application. He would further submit that the case of the applicant to set aside the earlier Condonation Board dated 17.12.1999 was not pressed since there was an implied supersession of the said Condonation Board's findings dated 17.12.1999. He would also request us to allow the restricted reliefs sought for by the applicant and thus to allow the application.

9. The Learned Senior Panel Counsel would submit in his argument that the applicant was rightly considered by the Condonation Board held during December, 1999 and this Tribunal had come to the conclusion of permitting the applicant to challenge the finding of the Condonation Board dated 17.12.1999 before appropriate forum and, therefore, the present application challenging the rejection of re-constitution of Condonation Board is not sustainable and the respondent was right in rejecting the application dated 27.1.2012 for re-constitution of the Condonation Board. He would also submit that the application was dismissed with liberty to challenge the Condonation Board dated 17.12.1999 and, therefore, the direction to constitute another Condonation Board cannot be possible. Since the applicant is not entitled to the relief of re-constitution of the Condonation

Board, he is bound by the decision of the earlier Condonation Board dated 17.12.1999. He would, therefore, submit that the application filed by the applicant with the restrictive prayers are not sustainable and, therefore, the application may be dismissed.

10. We have given anxious considerations to the arguments advanced on either side.

11. **Point No.1:** The admitted facts are that the applicant was enrolled in Indian Air Force on 31.10.1981 in the trade of radar Fitter and was discharged from service on 1.11.2001 in low medical category CAT CEE (P), which was attributable to military service. The applicant is also drawing service pension with 20% disability. At the time of his discharge from service, he was at the rank of Sergeant, promoted to the said rank on and from 1.2.1992. He was considered for promotion to the rank of Junior Warrant Officer (JWO) and the Condonation Board constituted to consider his case did not grant condonation of his disability in low medical category and, therefore, he was not promoted. Challenging the said rejection by the Condonation Board dated 17.12.1999 and the refusal to promote the applicant, he has filed a Writ Petition in W.P.No.5071 of 2000 in the High Court of Allahabad at Lucknow, and the said Writ Petition was transferred to

Armed Forces Tribunal, Regional Bench, Lucknow, where it was re-numbered as TA No.1440 of 2010, and from there it was re-transferred to the file of this Tribunal, which was re-numbered as A.T.No.1 of 2011 and was taken on file. While hearing the arguments, the applicant was permitted to withdraw the said application with liberty to file fresh application to challenge the decision of Condonation Board dated 17.12.1999 before the appropriate authority. The said Order was passed by this Tribunal in A.T.No.1 of 2011 on 19.1.2012.

12. The applicant applied for re-constitution of Condonation Board before the 1st respondent in his application dated 27.1.2012 quoting the Order passed by this Tribunal on 19.1.2012. The said application was rejected by the 1st respondent on 30/31-4-2012 and the said order rejecting the re-constitution of Condonation Board is now challenged in this application before us. Apart from that, the applicant seeks another relief, (i.e.) promoting him as Junior Warrant Officer notionally and to give benefits for the said post.

13. For the purpose of appreciating the contentions of the applicant and the respondents, it has become necessary to extract the relevant portions of the Order passed by this Tribunal in A.T.No.1 of 2011 on 19.1.2012 :-

"7. The grievance of the applicant is that the Condonation Board ought to have given their opinion for each and every individual whose name was not recommended for promotion separately. This point may also be taken into consideration by the Condonation Board to be constituted on the application of the applicant. It is further clarified that the Condonation Board to be constituted on the application of the applicant shall give its opinion only on the basis of the Medical Records placed before the Condonation Board which had given its opinion on 17.12.1999.

8. In fine, the application is dismissed as withdrawn with a liberty to challenge the opinion of the Condonation Board dated 17.12.1999 before the appropriate authority, if so advised. No costs. Time two months from today."

14. According to the direction given in the operative portion, we can understand that the application was dismissed as withdrawn with liberty to challenge the decision of the Condonation Board dated 17.12.1999 before the appropriate authority, if so advised, and time two months from the said date. Even though the applicant was given liberty to challenge the opinion of the Medical Board dated 17.12.1999 and to proceed further, this Tribunal

had observed and granted an implied permission to the applicant to submit an application before the competent authority to re-constitute the Condonation Board to consider the point raised by the applicant that the Condonation Board ought to have given their opinion for each and every individual whose name was not recommended for promotion separately. Apart from that, the Condonation Board to be re-constituted on the application of the applicant shall give its opinion with the help of medical records placed already before the Condonation Board, which gave its opinion on 17.12.1999. Therefore, it is clear that a Condonation Board should be re-constituted to substitute the opinion of the Condonation Board dated 17.12.1999 and its opinion should be considered as the opinion of the previous Condonation Board and the same could be challenged by the applicant before the appropriate authority, if so advised. The tenor of the Order was not properly understood by the respondents and it resulted in the rejection of the plea of re-constituting a Condonation Board on the application of the applicant.

15. No doubt, the applicant submitted an application for re-constitution of Condonation Board along with the plea of promoting him to the rank of Junior Warrant Officer. The said plea was not considered by the 1st respondent in the light of the Order of this Tribunal in para-7 of its Order dated 19.1.2012, but it had simply rejected the said application. This

Tribunal had given a specific direction to the re-constitution of Condonation Board to give its opinion on the basis of the medical records already placed before the Condonation Board, which gave its opinion on 17.12.1999.

16. The impugned order was dated 31.4.2011. On a cursory look of the said date, we could understand that the said date has been mistakenly put in as 31.4.2011 instead of 30.4.2012. This could be evidenced by the date of the application sent by the applicant as 27.1.2012. Moreover, the month of April has only 30 days and the date, namely 31st April, is not available on any year. While disposing the application submitted by the applicant for re-constitution of Condonation Board and for other reliefs, the 1st respondent ought to have obeyed the orders of this Tribunal passed in A.T.No.1 of 2011 dated 19.1.2012. The 1st respondent ought to have gone through para-7 of the Order and then proceed to understand para-8 and both paragraphs should have been combinedly read and understood by the applicant. Without application of mind over the contents of para-7 of the Tribunal's Order, it has been found in para-10 of the impugned order as follows :-

*"10. **AND WHEREAS,** it would not be appropriate to reconvene Condonation Board for considering your name for promotion*

because your case has already been discussed by the Condonation Board held in December 1999 as per the policy."

17. The 1st respondent ought to have accepted the application filed by the applicant on 27.1.2012 in respect of re-constitution of Condonation Board and to proceed further in respect of other reliefs sought for by the applicant in his application. The 1st respondent ought to have postponed the consideration of other reliefs sought for by the applicant in his representation dated 27.1.2012, till the re-constituted Condonation Board gives its opinion on the basis of the records submitted before the earlier Condonation Board dated 17.12.1999. Therefore, it is quite clear that the 1st respondent did not act in accordance with the directions given by this Tribunal to re-constitute the Condonation Board and to pass orders. The reasons assigned by the 1st respondent for rejecting the plea of the applicant dated 27.1.2012 are *ex facie* not correct. Therefore, we are of the considered view that the respondents ought to have obeyed the directions given by the earlier Bench in para-7 of the Order passed in A.T.No.1 of 2011 and should have re-constituted a Condonation Board to consider the case of the applicant along with batch mates. It was not done so. But various reasons have been incorporated which are not justified. Therefore, the impugned order dated 30/31-4-2012 rejecting the re-constitution of

Condonation Board is liable to be set aside. Accordingly, Point No.1 is decided in favour of the applicant.

18. **Point No.2:** The applicant sought for setting aside the opinion of Condonation Board dated 17.12.1999, and the impugned order dated 30/31-4-2012 and consequently the applicant be promoted notionally to the rank of Junior Warrant Officer and be reinstated or in the alternative, to pay pension accordingly. The applicant while asking for the re-constitution of Condonation Board sought for reinstatement and promotion to the rank of Junior Warrant Officer. The opinion of the Condonation Board to be re-constituted is yet to born. In the said circumstances, the relief sought for by the applicant is premature without knowing the opinion of Condonation Board. In an earlier occasion, this Bench had directed the applicant to approach appropriate authority, if not satisfied with the opinion of the Condonation Board dated 17.12.1999, which has to be re-constituted to give its opinion. Therefore, the other reliefs can be considered only upon the opinion of the Condonation Board directed to be re-constituted on the application of the applicant. In the said circumstances, the said relief asked for by the applicant for notional promotion could not be granted at this stage. This Bench had on 19.1.2012, permitted the applicant to file proceedings before the appropriate authority on the opinion of the Condonation Board, if so advised. We are also of the same opinion that the

applicant is at liberty to file necessary application before the appropriate authority challenging the findings of the Condonation Board ordered to be re-constituted, if adverse and so advised. Therefore, the relief of notional promotion of the applicant to the rank of Junior Warrant Officer and to give the benefits would not arise now, and the said relief can also be asked by the applicant in the said application. Hence the applicant is at liberty to await the opinion of the Condonation Board for seeking the relief of notional promotion as a consequential relief. Therefore, this point is clarified accordingly by giving liberty to the applicant to approach appropriate authority against the opinion of Condonation Board dated 17.12.1999 to be re-constituted as per the earlier Order.

19. **Point No.3:** In view of our discussion held in points 1 and 2 above, we are of the considered view that the application filed by the applicant seeking to set aside the impugned opinion of Condonation Board dated 17.12.1999 is dismissed as not pressed. The next relief of challenging the impugned order dated 30/31st April, 2012, in rejecting the plea of re-constitution of the Condonation Board afresh for considering the medical records placed before the Condonation Board dated 17.12.1999 is granted by setting aside the impugned order dated 30/31-4-2012. Accordingly, the 1st respondent is directed to re-constitute a Condonation Board within a period of two weeks from the date of receipt of the copy of this Order and to

comply with the directions of this Tribunal made in para-7 of the earlier Order dated 19.1.2012 made in A.T.No.1 of 2011. The applicant is at liberty to challenge the opinion of the newly re-constituted Condonation Board before the appropriate authority, if so adverse and so advised. The relief sought for by the applicant towards his promotion as Junior Warrant Officer notionally is not germane at this stage and it would be open to the applicant to seek such a relief also, if so advised.

20. With the aforesaid observations and directions, the application is allowed to the extent of setting aside the impugned order dated 30/31st April, 2012 passed by the 1st respondent. In other aspects, the application is dismissed with observation. Time for re-constitution of Condonation Board is two weeks from the date of receipt of the copy of this Order.

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

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

10.09.2013
(True Copy)

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

To:

1. The Chief of the Air Staff,
Air Headquarters, Vayu Bhavan,
New Delhi-1100106.
2. The Air Officer Commanding
Air Force Record Office,
Subroto Park,
New Delhi-110 010.
3. Mr. M.K. Sikdar and S. Biju,
Counsel for applicant.
4. Mr. B. Shanthakumar, SPC
Counsel for respondents.
5. OIC Legal Cell (Air Force),
Avadi, Chennai.
6. Library, AFT, Chennai.

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

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