

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No. 125 of 2014

Thursday, the 24th day of September, 2015

The Honourable Justice V.Periya Karuppiah
(Member-Judicial)
and
The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

Ex Sep (No.6481419) N.Munuswamy (70 years)
No.36/12, X Street, B.V.Nagar
Chennai - 600114

...Applicant

By Legal Practitioners:
M/s S.P.Ilangovan and B.A.Thayalan

vs

1. Union of India
Represented by The Defence Secretary
Ministry of Defence, South Block, New Delhi – 110 011
2. The Chief of Army Staff
Army Headquarters, Sena Bhavan, New Delhi – 110 011
3. O i C, DSC Records, PIN-901 277, C/o 56 APO
4. The Principal CDA (Pensions)
Draupadighat, Allahabad (U.P), PIN-211 014

...Respondents

Mr.G.Venkatesan, CGC

We have passed an Order to this Original Application on 18.03.2015 with the directions to convene Review Medical Board for the purpose of assessing the claim of disability 'Paranoid Reaction (Recovered) 297' suffered by the applicant, with certain time limit. At request of respondents, such time limit has been extended and, finally, the respondents had convened Review Medical Board at MH Secunderabad, and the applicant was admitted and examined, as directed by this Tribunal and had submitted a report with Review Medical Board proceedings and their opinion.

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General physical examination was essentially normal. Mental stgate examination revealed a kempt, cooperative individual with normal psychomotor activity, relevant and coherent speech, euthymic emotions, goal directed thinking generated at normal pace, no delusions or formal thought disorder, no depressive cognitions, no hallucinations and intact cognitive

functions. Ward observation revealed good self care, normal interaction with others and unimpaired biodrives. There was no evidence of any active/residual psychopathology.

In the last 37 yrs since his IMB, individual has remained asymptomatic without any medication, has had no relapses, he is capable of taking self care and able to communicate well with others. There is no evidence of active or residual psychotic features at present. In my opinion, his condition has improved significantly since his release from service and presently has no features of paranoid reaction/psychosis."

The Review Medical Board has opined that the applicant's condition has improved significantly and has now assessed his disability at 15 – 19% for the intervening period from June 1980 to date and for life thereafter.

3. We have heard further arguments of Mr.B.A.Thayalan, learned counsel for the applicant and Mr.G.Venkatesan, CGC assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing for respondents and perused all the documents produced before us.

4. The following issues merit our consideration

- i) Whether the former service of the applicant ought to have been counted towards invalid pension / service pension when he was invalided out from DSC, in accordance with para 126 of the Pension Regulations.*
- (ii) Whether the disability of the applicant can be considered as attributable or liable to military service; &*
- (iii) What relief, if any, the applicant is entitled to?*

5. Point 1: In the Original Application, the applicant had sought service / invalid pension on account his invalidment from service. At the time of invalidment, he had rendered 1 year, 7 months and 21 days of qualifying service with DSC. In

addition, he had 10 years service in the Army and at the time of joining DSC, he had elected to count his former service towards pension, in accordance with para 126 of Pension Regulations for the Army, 1961. Therefore, his claim would be that he had 11 years, 7 months and 21 days of qualifying service.

6. However, the respondents would state that in accordance with Condition 2 of the said para 126 of the Pension Regulations for the Army 1961, a person on re-employment should have completed a consecutive 3 years of service without two red ink entries or a court martial conviction. Since the applicant had only completed 1 year, 7 months and 21 days, he is not entitled to counting his former service and, therefore, his qualifying service for pension is only 1 year, 7 months and 21 days, i.e., the service he rendered in DSC. The respondents would further contend that the Review Medical Board had clearly stated that the disability of the applicant has significantly improved and placed his disability at 15-19% for life and the Original Medical Board had opined that the said disease 'Paranoid Reaction (Recovered) 297' is neither attributable to nor aggravated by military service. In view of the foregoing, the applicant is not entitled to invalid pension and he was rightly paid invalid gratuity at the time of discharge from DSC.

7. The learned counsel for the applicant would rebut the claim of the respondents and state that even though Condition 2 is a restricting factor to count former service towards pension, as per para 126 (c) of the said Pension Regulations, in individual cases, a competent authority has the powers to relax the said Condition 2 at his discretion. For a clear understanding, the relevant portions of para 126 is reproduced below:

Counting of Former Service for Pension and Gratuity

126.(a) Combatants and enrolled non-combatants who have former service to their credit may be allowed by a competent authority to reckon their former service towards pension and gratuity to the extent specified in the Table below, subject to the fulfillment of the conditions stated in column 5 thereof and provided that they were not dismissed from former service.

(b) The condition 1, 2 and 3 referred to in column 5 of the Table are as follows:

Condition 1 – At the time of re-employment/re-enrolment, the individual shall have declared his former service and cause of discharge therefrom and elected to count that service towards pension or gratuity, and retirement/death gratuity. The election once made shall be final.

Condition 2 - After re-employment/re-enrolment the individual shall be completed any consecutive period of three years service without two red ink entries or a court martial conviction.

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(c) In individual cases, a competent authority may relax at its discretion condition 2 and 3.

8. The rules permit under certain circumstances to count former service towards pension / gratuity even though the 3 years period was not completed by the applicant during the re-employed service. However, the respondents have refused to do so. We are of the view that the applicant firstly has neither been court-martialed nor has been dismissed on disciplinary grounds or been a habitual offender but was invalided out of service solely on medical grounds. These circumstances are beyond the control of an individual and the respondents being a welfare state, ought to have conceded

the request of the applicant to count his former service in the Army towards grant of invalid pension.

9. Accordingly, we are inclined to agree with the learned counsel for the applicant that the applicant is entitled to the counting of his former service for grant of invalid pension.

10. Point (ii): As we have seen, the Invaliding Medical Board held in June 1978 had opined that the applicant was suffering from 'Paranoid Reaction (Recovered) 297' and it had opined that the disease has no connection with service conditions and declared the disease to be non-attributable and non-aggravated by military service. The disability was assessed at 40% for two years.

11. The Hon'ble Apex Court, in several judgments had, including in Civil Appeal No.4949 of 2013 arising out of SLP (C) No.6940 of 2010 dated 02 July 2013 in the case of Dharamvir Singh vs Union of India & Ors had opined that *"in the absence of any evidence on record to show that the appellant was suffering..... at the time of acceptance of his service, it will be presumed that the appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service"*. And unless otherwise proved to the contrary, the presumption would be that the disability of the applicant bore a causal connection to the service conditions. On the back of the above judgments of the Hon'ble Apex Court (Supra) this Bench has passed several orders regarding presumption of disease having causal connection with service conditions. In such cases, the benefit should go to the applicant and the onus of proving to the contrary lies with the Medical Board / Respondents. In the instant case, we have seen that the

applicant served in the Army for 10 years. Thereafter, he joined the DSC and admittedly, at the time of enrolling in the DSC, he was found to be medically fit and had no medical ailments / said disease. He was afflicted with the disease while in service with DSC and, therefore, the presumption of causal connection to military service would normally go in his favour, unless the Medical Board recorded reasons stating to the contrary. In the instant case, the Medical Board has merely stated “the disability has no connection with service conditions” without giving any specific reasons to support the said opinion. In view of the foregoing, we are of the view that the case fits squarely with the Hon’ble Apex Court judgment (Supra) and accordingly deem that the said disease ‘Paranoid Reaction (Recovered) 297’ is attributable to military service. Therefore, the applicant’s disease ought to be declared as attributable to military service and granted disability pension.

12. However, the Review Medical Board held on April 2015 (Supra) has stated that the applicant’s health has significantly improved and has assessed the present degree of disability as 15-19% for life. In such circumstances, the applicant is normally not entitled to disability pension. However, under Rule 197 (b) of Pension Regulations for the Army 1961 which governs invalid pension / gratuity, an individual who is though invalided out of service on account of a disability which is attributable to or aggravated by military service and is assessed at less than 20% is entitled to invalid pension or gratuity. For a better understanding, the relevant portion *is reproduced below:*

Invalid Pension/Gratuity when Admissible

197. Invalid pension/gratuity shall be admissible in accordance with the Regulations in this chapter, to

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(b) an individual who is though invalided out of service on account of a disability which is attributable to or aggravated by service, but the disability is assessed at less than 20%;

13. In view of the foregoing, the applicant would ordinarily have been entitled to disability pension but for his disability assessed as being less than 20% (15 – 19%) since June 1980. However, he is entitled to invalid pension / gratuity, in accordance with para 197 (b) above. Further, we also note that the applicant has limited his prayer to the grant of service / invalid pension. Since the applicant has not completed 15 years of qualifying service for service pension, he is not entitled to service pension. However, since he is deemed to have more than 10 years of qualifying service at the time of invalidment, he is entitled to invalid pension.

14. While condoning the delay at the time of admitting the OA, we had applied the principles laid down by the Apex Court in the case of Uol & Ors vs Tarsem Singh reported in (2008) 8 SCC 648 and, therefore, any benefits accruing would be limited to 3 years prior to the date of filing this application, (21.08.2014), i.e., 21.08.2011.

15. In fine, the applicant is entitled to invalid pension after counting his former service of 10 years in the Army and, therefore, at the time of his invalidment, his qualifying service should be considered as 11 years 7 months and 21 days. The applicant is entitled to invalid pension 3 years prior to the date of filing this application, i.e., from 21.08.2011. Arrears shall be paid within a period of 3 months from the date of this order failing which, an interest @ 9% p.a. shall be paid by the respondents. Invalid gratuity paid to the applicant earlier, if any, will be adjusted against the arrears payable to him.

16. The O.A. is allowed to that extent. No costs.

Lt Gen K Surendra Nath
Member (Administrative)

Justice V.Periya Karuppiah
Member (Judicial)

24.09.2015

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No
ap

Internet : Yes/No

Note to Registry: *The order passed by us on OA 125 of 2014, dated 18.03.2015, shall be attached with this order.*

Lt Gen K Surendra Nath
Member (Administrative)

Justice V.Periya Karuppiah
Member (Judicial)

To

1. The Defence Secretary
Ministry of Defence, South Block, New Delhi – 110 011
2. The Chief of Army Staff
Army Headquarters, Sena Bhavan, New Delhi – 110 011
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5. M/s S.P.Ilangovan and B.A.Thayalan
Counsel for the applicant
6. Mr.G.Venkatesan, CGC
Counsel for the respondents
7. Officer in-Charge, 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.125 of 2014

Dated : 24.09.2015