

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.95 of 2014

Monday, the 28th day of September 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)
AND
THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

(No.2579134) Ex Nk (TS) N. Basavaraj
Nedumaruthi Village & PO
Krishnagiri Taluk & District
Tamil Nadu-635115.

.... Applicant

By Legal Practitioner:
Mr. SP Ilangovan

vs.

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

2. Chief of the Army Staff
Army Head Quarters
Sena Bhavan, New Delhi-110 011.

3. Officer In-Charge, MRC Records
APS PIN 900458
C/o 56 APO.

4. The Principal CDA (Pensions)
Draupathighat, Allahabad
UP 211 014.

.... Respondents

By Mr. N.Ramesh, CGSC

ORDER

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

1. This application is filed by the applicant seeking to set aside the order of 3rd respondent in denying the disability pension dated 26.03.2014 and to direct the respondents to pay eligible disability pension to the applicant from the date of his discharge and to pay the arrears.

2. The case of the applicant in brief would be as follows:

The applicant was enrolled as GNR (Technical Assistant) in the Indian Army on 09.05.1979. During 1991 when he was posted to 8 Madras in Uri Sector in Jammu and Kashmir, he received a bullet injury in the head grazing close to his left eye. He was first treated in the MI Room and then shifted to the 92BH Srinagar for treatment which lasted for few months. After that, he was continuously suffering from severe head ache and was slowly losing vision in the left eye despite he was continuously treated in the MH Ahmedabad and at last he totally lost sight in his left eye. The applicant submits that he was ultimately medically boarded out from Army on 31.05.1996 after 17 years in Low Medical Category "CEE" (PMT) with 30% disability for life. His disability pension claim was recommended and forwarded to PCDA (P) Allahabad, but was rejected by the PCDA (P) stating that the disability of "Central Serous Retinopathy" suffered by him was neither attributable to nor

aggravated by military service. His appeals were also rejected in a routine manner. The applicant submits that due to poverty, illiteracy and financial hardship, he could not pursue the matter further. Thereafter, he caused a legal notice dated 12.03.2014 on the 3rd respondent for providing Medical Records of initial diagnosis, treatment, Record of Postings & Release/Invalidation Medical Board proceedings but the same have not been effected. Having exhausted all remedies, the applicant has ultimately come before this Tribunal for redressal. He thus requests that this application may be allowed.

3. The respondents filed a reply statement which would be as follows:

The applicant was enrolled in The Madras Regiment on 09th May 1979 and discharged from service with effect from 01 June 1996 after rendering 17 years 23 days qualifying service under Army Rule 13(3) III (i). While on duty in field area, on 06th September 1991, he sustained gunshot wound of severe nature which was diagnosed as "GSW (LT) TEMPORAL REGION (SUPERFICIAL) admitted in 92 Base Hospital and was discharged on 24th September 1991. He was again admitted in Military Hospital, Ahmedabad on 23rd May 1995 for the ID "CENTRAL SEROUS RETINOPATHY (LEFT EYE) and discharged on 03rd July 1995 with recommendation of four weeks' sick leave. After expiry of said leave, he again reported to Military Hospital on 02.08.1995 and discharged from there on 31.08.1995. Due to

completion of his terms of engagement and also the applicant was placed in Low Medical Category "CEE" due to the ID "CENTRAL SERIOUS RETINOPATHY", he was admitted in MH Ahmedabad on 24.10.1995 where the medical authorities regarded his disability as not attributable to nor aggravated by military service which being constitutional disease and not connected with service and assessed at 20% for 02 (two years). Subsequently, PCDA (P), Allahabad rejected the claim of the applicant by letter dated 17.09.1996 that his ID was neither attributable to nor aggravated by military service and the same was communicated to the applicant by letter dated 01.10.1996 with an advice to prefer an appeal. The applicant's appeal before the Government of India, MOD (Pen-A) was also rejected by letter dated 30.12.1998. As per Para 173 of Pension Regulations for the Army 1961 (Part I), the primary condition for the grant of disability pension is "Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by military service and is assessed at 20% or over". In the present case, though the ID of the applicant was assessed at 20% for two years, the same was neither attributable to nor aggravated by military service being constitutional disease and not connected with military service. Therefore, the respondents request that the application may be dismissed.

4. The applicant filed a rejoinder which would be as follows: The applicant sustained the ID during 1991 and not 1995 as stated by the respondents in their reply statement. The Graded Specialist (Ophthalmology) who examined the applicant has stated in the Summary of Opinion (R1-P09) that is an old case which would establish that the applicant's ID existed for long time since 1991. Further that the applicant's eye sight in his left was 6/60 (No improvement with glasses) as compared to the right eye 6/6. It is highly impossible that he could have lost vision in his left eye all of a sudden in 1995 without any injury or infection as stated by the respondents in the reply statement. If the ID was constitutional in nature, it could have appeared all of a sudden that too to such a devastating magnitude of loss of total sight of left eye. There is every possibility that he lost his vision in left eye due to medical negligence of the Military Doctors in diagnosis and treatment.

5. The applicant submits that the non-production of the medical record of diagnosis and treatment by the 92 BH for the GSW (LT) would contribute suspicion. The ID must have been acquired on account of the injury sustained by the applicant in head close to his left eye during his posting to 8 MADRAS IN Uri Sector, J& K. The PCDA (P) cannot simply reject the plea of the applicant without medically examining him. The IMB proceedings itself is inconsistent in its observations and hence it cannot be relied upon.

6. On the pleadings of both parties and the arguments advanced on either side, we find the following points emerged for consideration.

(1) Whether the applicant is entitled for disability pension as sought for by him?

(2) Whether the impugned order dated 26.03.2014 passed by the 3rd respondent has to be set aside ?

(3) To what relief the applicant is entitled for?

7. **Point Nos.1 and 2:** On hearing both sides, we passed an order on 18.03.2015 directing the respondents to convene a Review Medical Board at MH Chennai for the purpose of ascertaining the degree of disability, "Central Serous Retinopathy" (Left Eye)" on the applicant and its probable duration and to file a report to that effect before us. Accordingly, a Review Medical Board was constituted and the applicant was examined by the said Medical Board and the proceedings of the Review Medical Board with its opinion was filed today. According to the opinion given by the Review Medical Board, the condition of the disability was static and the degree of disability was ascertained at 20%. In our earlier order we have discussed about the duration of disability was for two years only and therefore, we wanted to know the present percentage of the disability of the applicant, if any, and its probable duration. The Review Medical Board's opinion would state the condition of the disability as static and the existing percentage of disability at 20% for life.

8. The learned counsel for the applicant would submit in his argument that the Review Medical Board has given its opinion regarding the percentage of disability and duration and has also opined that the incident of bullet injury initiating the sequence of events leading to the present condition cannot be ruled out. Relying upon the said opinion, the learned counsel for the applicant would submit that the applicant's disability was erroneously opined by IMB as not attributable to nor aggravated by military service and therefore, the benefit of doubt arisen on the opinion of RMB should have been given to the applicant. He would also refer to a judgment by the Hon'ble Apex Court made in **Dharmvir Singh's** case and argued the disability sustained even in the peace station after the entry into the Army should have been presumed to be attributable to or aggravated by military service. He would also submit that the applicant is still suffering from the disability caused during his service at the same condition and this would go a long way to show that the disability was incurred only during the service and the opinion of the present Review Medical Board had strengthened the case of the applicant, that the disability was caused by the military service.

9. Per contra, the learned counsel for the respondents would submit in his argument that the opinion of the Invaliding Medical Board as to the attributability or aggravability became final and it cannot be disbelieved by the Court upon the opinion of RMB. It is also argued that the

directions given to the Review Medical Board was to find out the present degree of disability and its probable duration only, but the Review Medical Board had given its opinion as to the attributability to military service which is also not clear/definite. Therefore, he would submit that the opinion of the Invaliding Medical Board would be final and therefore, the applicant is not entitled for disability pension despite his condition is found to be static till today.

10. On a careful consideration of the submission on either side, we find that the disability of "Central Serous Retinopathy" (Left Eye)" was admittedly sustained by the applicant during service. No doubt the said disability of 20% as assessed by the Invaliding Medical Board is still found on the applicant for life by the Review Medical Board, held recently. It is also not disputed that the applicant had also sustained a bullet injury at his temporal region and the said injury was not found to be the cause for the disability by the IMB. According to the judgment of the Hon'ble Apex Court rendered in **Dharmvir Singh's** case, the Court has to presume the attributability or aggravability of any disability caused to the applicant, if it was sustained by him after his entry into service. The burden is shifted on the respondents to prove the contrary in such cases. Accordingly, the applicant in this case sustained the ID "Central Serous Retinopathy" (Left Eye)" during his service period and the respondents did not have any document to show that the said

disability was not sustained due to service conditions except the opinion of the IMB. Now the RMB had opined that the disability of bullet injury initiating the sequence of events leading to the present condition with regard to disability cannot be ruled out which would go a long way to show that the opinion of the IMB that the bullet injury would not be a cause for the disability was taken away. In the said circumstance, the presumption with regard to the attributability or aggravability to military service once again emerged and it has not been rebutted by any other proof on the side of the respondents. In the said circumstances, the disability sustained by the applicant "Central Serous Retinopathy" (Left Eye)" is found to have attributable to military service.

11. According to the applicant, the said disability of 20% should have been conceded by the respondents, but he was not granted any disability pension on the disability sustained by him. No doubt the applicant should have been granted with disability pension on his discharge from service on 31.05.1996 which was not granted. Now we find the opinion of the Re-Survey Medical Board and have come to the conclusion of granting disability pension in favour of the applicant for the disability of 20% sustained by him. The IMB was held for the purpose of boarding out the applicant from service, however, the applicant was discharged on 31.05.1996 after completing 17 years of service. Whether he has been boarded out on invalidment or discharge from service on completion of

his term of engagement, the applicant would be entitled to the benefit of broadbanding as conferred by the letter of Government of India, dated 31.01.2001, in view of the judgment of Hon'ble Apex Court made in Ram Avatar's case. Therefore, the disability of 20% for life as opined by the Re-Survey Medical Board is liable to be broadbanded to 50% as per the benefit conferred in Para 7.2 of the letter of Government of India dated 31.01.2001. Thus, the applicant is entitled to 50% of the disability pension as sought for by him. The applicant is a pensioner who is receiving his service pension and therefore, the disability pension could be ordered in his favour only in respect of disability element of disability pension with due broadbanding. Therefore, the order passed by the respondents dated 26.03.2014 is liable to be set aside. Consequently, the applicant is entitled to for disability element of pension duly broadbanded to 50%.

12. While condoning the delay caused in filing the Original Application, we have passed an order in M.A.No.173 of 2014 that the applicant would be entitled to disability pension, if found in his favour with effect from three (3) years prior to the filing of the Original Application. The Original Application was filed on 16.04.2014 and therefore, the entitlement of the applicant to get the disability pension would commence from 16.04.2011 onwards. Accordingly, both the points are decided in favour of the applicant.

13. **Point No.3:** In view of the discussions in the above points, we found that the applicant is entitled to disability element of disability pension at 50% after broadbanding from 20% with effect from 16.04.2011. This application is allowed to that extent only.

14. In fine, the application is allowed as indicated above. The respondents are hereby directed to pay disability element of pension with effect from 16.04.2011 and the arrears of disability element of pension in favour of the applicant shall be paid and Corrigendum to PPO of the applicant shall also be done within a period of three (3) months, from today. In default to comply, the applicant is entitled to the said arrears with interest at 9% per annum from the date of default till the entire payment is made. No order as to costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

28.09.2015
(True copy)

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

Internet : Yes/No
Internet : Yes/No

N.B.: The earlier order dated 18th March 2015 passed by us in the above O.A. shall form part of this order.

Sd/
M (A)

Sd/
M (J)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.95 of 2014

Wednesday, the 18th day of March 2015

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

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

(No.2579134) Ex Nk (TS) N. Basavaraj
Nedumaruthi Village & PO
Krishnagiri Taluk & District
Tamil Nadu-6635115.

.... Applicant

By Legal Practitioner:
Mr. SP Ilangovan

VS.

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South Block, New Delhi-110 011.

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Sena Bhavan, New Delhi-110 011.

3. Officer In-Charge, MRC Records
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4. The Principal CDA (Pensions)
Draupathighat, Allahabad
UP 211 014.

.... Respondents

By Mr. N. Ramesh, CGSC

ORDER

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

1. The applicant filed this application seeking for a direction to call for all the records of the applicant, viz., initial diagnosis and treatment at 92 BH, Record of Postings & Release/Invalidation Medical Board proceedings and examine them and set aside the order of the 3rd respondent denying the disability pension to the applicant, vide Letter No.2579134/CC-LN/26/PG (Legal Cell), dated 26.03.2014 and direct the respondents to pay the eligible disability pension to the applicant from the date of his discharge and pay the arrears due with 12% interest, as admissible under law.

2. The case of the applicant in brief would be as follows:

The applicant was enrolled as GNR (Technical Assistant) in the Indian Army on 09.05.1979. During 1991 when he was posted to 8 Madras in Uri Sector in Jammu and Kashmir, he received a bullet injury in the head grazing close to his left eye. He was first treated in the MI Room and then shifted to the 92BH Srinagar for treatment which lasted for few months. After that, he was continuously suffering from severe head ache and was slowly losing vision in the left eye despite he was continuously treated in the MH Ahmedabad and at last he totally lost sight in his left eye. The applicant submits that he was ultimately

medically boarded out from Army on 31.05.1996 after 17 years in Low Medical Category "CEE" (PMT) with 30% disability for life. His disability pension claim was recommended and forwarded to PCDA (P) Allahabad, but was rejected by the PCDA (P) stating that the disability of "Central Serous Retinopathy" suffered by him was neither attributable to nor aggravated by military service. His appeals were also rejected in a routine manner. The applicant submits that due to poverty, illiteracy and financial hardship, he could not pursue the matter further. Thereafter, he caused a legal notice dated 12.03.2014 on the 3rd respondent for providing Medical Records of initial diagnosis, treatment, Record of Postings & Release/Invalidation Medical Board proceedings but the same have not been effected. Having exhausted all remedies, the applicant has ultimately come before this Tribunal for redressal. He thus requests that this application may be allowed.

3. The respondents filed a reply statement which would be as follows:

The applicant was enrolled in The Madras Regiment on 09th May 1979 and discharged from service with effect from 01 June 1996 after rendering 17 years 23 days qualifying service under Army Rule 13(3) III (i). While on duty in field area, on 06th September 1991, he sustained gunshot wound of severe nature which was diagnosed as "GSW (LT) TEMPORAL REGION (SUPERFICIAL) admitted in 92 Base Hospital and was discharged on 24th September 1991. He was again admitted in

Military Hospital, Ahmedabad on 23rd May 1995 for the ID "CENTRAL SERIOUS RETINOPATHY (LEFT EYE) and discharged on 03rd July 1995 with recommendation of four weeks' sick leave. After expiry of said leave, he again reported to Military Hospital on 02.08.1995 and discharged from there on 31.08.1995. Due to completion of his terms of engagement and also the applicant was placed in Low Medical Category "CEE" due to the ID "CENTRAL SERIOUS RETINOPATHY", he was admitted in MH Ahmedabad on 24.10.1995 where the medical authorities regarded his disability as not attributable to nor aggravated by military service which being constitutional disease and not connected with service and assessed at 20% for 02 (two years). Subsequently, PCDA (P), Allahabad rejected the claim of the applicant by letter dated 17.09.1996 that his ID was neither attributable to nor aggravated by military service and the same was communicated to the applicant by letter dated 01.10.1996 with an advice to prefer an appeal. The applicant's appeal before the Government of India, MOD (Pen-A) was also rejected by letter dated 30.12.1998. As per Para 173 of Pension Regulations for the Army 1961 (Part I), the primary condition for the grant of disability pension is "Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by military service and is assessed at 20% or over". In the

present case, though the ID of the applicant was assessed at 20% for two years, the same was neither attributable to nor aggravated by military service being constitutional disease and not connected with military service. Therefore, the respondents request that the application may be dismissed.

4. The applicant filed rejoinder which would be as follows: The applicant sustained the ID during 1991 and not 1995 as stated by the respondents in their reply statement. The Graded Specialist (Ophthalmology) who examined the applicant has stated in the Summary of Opinion (R1-P09) that is an old case which would establish that the applicant's ID existed for long time since 1991. Further that the applicant's eye sight in his left was 6/60 (No improvement with glasses) as compared to the right eye 6/6. It is highly impossible that he could have lost vision in him left eye all of a sudden in 1995 without any injury or infection as stated by the respondents in the reply statement. If the ID was constitutional in nature, it could have appeared all of a sudden that too to such a devastating magnitude of loss of total sight of left eye. There is every possibility that he lost his vision in left eye due to medical negligence of the Military Doctors in diagnosis and treatment.

5. The applicant submits that the non-production of the medical record of diagnosis and treatment by the 92 BH for the GSW (LT) would contribute suspicion. The ID must have been acquired on account of the

injury sustained by the applicant in head close to his left eye during his posting to 8 MADRAS IN Uri Sector, J& K. The PCDA (P) cannot simply reject the plea of the applicant without medically examining him. The IMB proceedings itself is inconsistent in its observations and hence it cannot be relied upon.

6. On the pleadings of both parties and the arguments advanced on either side, we find the following points emerged for consideration.

(1) Whether the applicant is entitled for disability pension as sought for by him?

(2) To what relief the applicant is entitled for?

7. Point Nos.1 and 2: The indisputable facts emerged out of the pleadings and the arguments submitted on either side, would be that the applicant was enrolled on 09.05.1979 and boarded out from Army on 31.05.1996 (as per respondents on 01.06.1996) after 17 years 23 days qualifying service under Army Rule 13 (3) III (i).

8. According to the applicant, during 1991 when he was posted to 8 MADRAS, IN Uri Sector in Jammu and Kashmir, he received a bullet injury in the head grazing close to his left eye and was continuously treated in the MH Ahmedabad and at last he totally lost sight in his left eye. He was therefore boarded out from Army on 31.05.1996. His disability pension was rejected by PCDA (P) stating that the disability of

"CENTRAL SEROUS RETINOPATHY" suffered by him was neither attributable to nor aggravated by military service. The applicant submits that the Army Medical Officers were unable to cure him of his ailments and they chose to discharge him from Army Service in Low Medical Category "CEE (PMT) with 30% disability for life but unlawfully they denied him the disability pension. Therefore the ID contracted during the course of Army service should be held to be attributable to or aggravated by Army service in accordance with Section 4, 5a, 8 and 9 of "Entitlement Rules for Casualty Pensionary Awards 1982 and the applicant should be given his eligible disability pension.

9. On the contrary, the respondents submits that on perusal of the applicant's service/medical documents, the Appellate Medical Authority had found that the ID was contracted in peace area, that there was no history of injury/infection and that the ID was considered not connected with military service. Therefore, the applicant's disability was regarded by the medical authorities as neither attributable to nor aggravated by military service and the applicant is not entitled to disability pension.

10. After a long lapse of 20 to 25 years, the applicant has sought for the present relief. The IMB opined that the probable duration of the disability was for 2 years. The learned counsel for the applicant submits that the applicant is still having the ID. Since a long period of 20 or 25 years has been elapsed and no Review Medical Board has been

subsequent convened to assess the degree of disability and the probable duration we are not in a position to conclude as to whether the applicant is still suffering from the said IDs or not so as to decide the case as pleaded by the applicant.

11. In order to find out the present degree of the disability of the applicant and its probable duration, we are necessarily to direct the respondents to convene a Review Medical Board for that purpose and to file its report. On that aspect, the attributability or the aggravability to the disabilities need not be gone into at this stage by the Review Medical Board since the original Medical Board gave its opinion at the time of examining the individual in the year 1996. Both the parties will be benefited by convening of such a Review Medical Board which would enlighten the Court also to come to a correct conclusion in respect of the existing degree of disability and its probable duration, if any. The Original Application could be disposed of only after the receipt of such a report of the Review Medical Board after the examination of the applicant.

12. Accordingly, we direct the respondents to convene a Review Medical Board at MH Chennai for the purpose of ascertaining the degree of disability, CENTRAL SEROUS RETINOPATHY (LEFT EYE) on the applicant and its probable duration and to file a report on that aspects before us. The said Review Medical Board shall be convened by the respondents

within a period of one month from today and sufficient notice shall be issued or intimation be given to the applicant to appear before the Review Medical Board for being examined towards the aforesaid purpose without fail. The Review Medical Board is also directed to file its report on the above reference within a period, which is not later than 04.06.2015. Hence, post the case on 04.06.2015 for filing Review Medical Board Proceedings with its opinion.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

18.03.2015
(True copy)

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

Internet : Yes/No
Internet : Yes/No

VS

To:

1. The Secretary, Ministry of Defence
South Block, New Delhi-110 011.

2. Chief of the Army Staff
Army Head Quarters
Sena Bhavan, New Delhi-110 011.

3. Officer In-Charge, MRC Records
APS PIN 900458
C/o 56 APO.

4. The Principal CDA (Pensions)
Draupathighat, Allahabad

5. Mr. SP Ilangovan
Counsel for applicant.

6. Mr. N. Ramesh, CGSC
For Respondents.

7. OIC, Legal Cell,
ATNK & K Area, Chennai.

8. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

O.A.No.95 of 2014

Dt:28.09.2015