

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O A No.125 OF 2010

THURSDAY, THE 13TH DAY OF DECEMBER, 2012/22ND AGRAHAYANA, 1934

CORAM:

HON'BLE MR. JUSTICE SHRI KANT TRIPATHI, MEMBER (J)

HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

G. INDUSEKHARAN NAIR, (EX NC (E) 804986 K), AGED 49 YEARS,
S/O. S. GANGADHARAN NAIR, RESIDING AT "SAIKRIPA",
T.C. 19/1748(3), KESAVAN NAIR ROAD, POOJAPURA P.O.,
THIRUVANANTHAPURAM, KERALA, 695 012.

BY ADV. SRI. B. HARISHKUMAR

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT (DEFENCE),
MINISTRY OF DEFENCE, NEW DELHI.
2. THE RECORD OFFICER, AIR FORCE RECORD OFFICE,
SUBROTO PARK, NEW DELHI.
3. THE DIRECTOR GENERAL,
PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSION),
ALLAHABAD, UTTAR PRADESH.
4. THE AIR CHIEF, AIR HQ (DDPA-111), VAYU BHAVAN, NEW DELHI.

R1 TO R4 BY ADV. SMT. E.V. MOLY, CENTRAL GOVT. COUNSEL.

ORDER

Shri Kant Tripathi, Member (J):

The applicant, G.Indusekharan Nair, No.804986 K, has filed the instant Original Application for disability pension.

2. The applicant joined the Indian Airforce as a non-combatant (enrolled) on 2.4.1986 and was discharged therefrom on 8.6.2006 at his

own request. The applicant was examined by the Release Medical Board before his discharge and the Medical Board found him suffering from primary hypertension, diabetics mellitus and rheumatic heart disease. The applicant preferred a claim for disability pension, but was denied on the ground that the aforesaid diseases were constitutional in nature and were in no way aggravated by or attributable to military service. Thereafter the applicant preferred a first appeal, which was also dismissed on 1st February 2011, a copy of the rejection order is on record as Annexure R1. The appellate authority arrived at the following conclusions:

"2. Your appeal has been considered by the First Appellate Committee. You were enrolled in the IAF on 02 Ap 86 and discharged from service wef 09 Jun 06 under the clause "On fulfilling the conditions of your enrolment". The Release Medical Board (RMB) assessed your disabilities i.e. ID (i) Primary Hypertension @ 30%, ID (ii) Diabetes Mellitus @ 15-19% and ID (iii)RHD @15-19% for life and composite 30% for life and held the same as neither attributable to nor aggravated by service (NANA). The Pension Sanctioning Authority (PSA) accordingly rejected your disability pension claim considering the disabilities as NANA. Consequently, you filed the present appeal. Dy.DGAFMS (Pen) has opined, "Onset of ID (i) and (iii) were in Jul 2001 and ID (iii) in Oct 93. ID (i) is an idiopathic disorder with no other service related cause, hence conceded as not attributable to service. As per his posting profile onset of ID(i) was in peace station, where he served till release, hence conceded as not aggravated by service. ID (ii) is a metabolic disorder with no other service related

cause hence not attributable to service. Onset of ID (ii) was in peace and served in peace till release hence conceded as not aggravated by service. Onset of ID (iii) was in Oct.93. Individual gave history at the time of medical board that he was diagnosed as a case of Rheumatic fever at the age of 13 yrs before joining service, hence ID (iii) is conceded as not attributable to or aggravated by service. Para 43, 26 & 83, Chapter VI, GMO 2002 and amendment 2008 refers. The appeal merits rejection.

3. After examining all material facts, relevant medical documents and your appeal, the First Appellate Committee has therefore rejected your appeal.

4. Notwithstanding the above, you are entitled to make a second and final appeal to the Defence Minister's Appellate Committee on Pensions. If so desired, the appeal may be preferred within the stipulated period of six months and addressed to DPA, Air HQ, Vayu Bhawan, New Delhi -110106."

3. It may not be out of context to mention that the present O A was filed even during the pendency of the first appeal without waiting for the final result of the appeal, but during the pendency of the O A, the first appellate authority disposed of the appeal and passed the aforesaid order. In view of the pendency of the O.A., the applicant could not file any second appeal.

4. Mr.Harishkumar, appearing for the applicant, submitted that the Release Medical Board failed to give due consideration to Rule 15 of the Entitlement Rules for Casualty Pensionary Awards, 1982, and Annexure III appended thereto which clearly provides that

Hypertension could be aggravated by the stress and strain of the service conditions. Rule 15 of the Entitlement Rules, 1982 which is relevant in this context, is reproduced as follows:

"The onset and progress of some diseases are affected by environmental factors related to service conditions, dietic compulsion, exposure to noise, physical and mental stress and strain. Disease due to infection arising in service, will merit an entitlement of attributability. Nevertheless, attention must be given to the possibility of pre-service history of such conditions, which, if proved, could rule out entitlement of attributability but would require consideration regarding aggravation. For clinical description of common diseases reference shall be made to the Guide to Medical Officer (Military Pension) 1980 as amended from time to time. The classification of diseases affected by environmental factors in service is Annexure III to these Rules."

5. Learned counsel for the applicant further submitted that the applicant intends to file second appeal, therefore, he may be permitted to do so. It was next submitted that the applicant challenges the proceedings of the Release Medical Board and its conclusion, therefore, the second appellate authority may be required to consider the applicant's case after obtaining a fresh opinion from an Appeal Medical Board.

6. In our view, the aforesaid submissions made by the learned counsel for the applicant have much substance and the O.A. is liable to

be disposed of accordingly. In view of the fact that we are directing the second appellate authority to consider the second appeal if filed, we do not consider it appropriate to express any opinion on the merits of the case.

7. The Original Application is disposed of with the direction to the applicant to prefer the second appeal within six weeks from today and in case the second appeal is so filed, the same may be given due consideration by the second appellate authority in accordance with law. It will, however, be open to the second appellate authority to constitute an Appeal Medical Board for assessing the disability of the applicant if the constitution of such Board is considered necessary and expedient for a just decision. It is further directed that second appellate authority shall take appropriate reasoned decision on the second appeal as early as possible, preferably within six months from the date of its receipt.

8. There will be no order as to costs.

9. Issue free copy of this order to both side.

Sd/-
LT. GEN. THOMAS MATHEW,
MEMBER (A)

Sd/-
JUSTICE SHRI KANT TRIPATHI,
MEMBER (J)

DK.

(True copy)

Prl. Private Secretary