

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI  
O.A.NO. 126 OF 2010  
TUESDAY, THE 11TH DAY OF DECEMBER, 2012/20TH AGRAHAYANA, 1934  
CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)  
HON'BLE LT.GE.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

KASHIMSAB RAMAZAN, AGED 26 YEARS,  
S/O.MAHAMMAD SAB, NO.2802093 EX-RECT,  
THE MARATHA LIGHT INFANTRY, RC – VIII,  
VILL-VANAHALLI, POST-HEBBALLI,  
DIST-DHARWARD, KARNATAKA STATE.

BY ADV.SRI.RAMESH.C.R.

VERSUS

RESPONDENTS:

1. THE UNION OF INDIA,  
THROUGH THE SECRETARY,  
MINISTRY OF DEFENCE (ARMY),  
SOUTH BLOCK, NEW DELHI – 110 001.
2. THE CHIEF OF ARMY STAFF,  
DHQ.P.O.INTEGRATED HQRS.,  
MINISTRY OF DEFENCE,  
SOUTH BLOCK, NEW DELHI – 110 001.
3. THE PRINCIPAL CONTROLLER OF DEFENCE  
ACCOUNTS (PENSION), DRAUPADI GHAT,  
ALLAHABAD,UTTARPRADESH – 211 014.
4. THE RECORDS, THE MARATHA LIGHT INFANTRY,  
BELGAUM, KARNATAKA, PIN – 590 009.

BY ADV.SRI.K.M.JAMALUDHEEN, SENIOR PANEL COUNSEL

O R D E R

Shrikant Tripathi, Member (J):

The applicant Kashimsab Ramazan No.2802093 M who was invalided out of service as a Recruit, has filed this Original Application for disability pension.

2. The applicant was inducted in the Indian Army on 28<sup>th</sup> January 2002 and was invalided out on 20<sup>th</sup> August 2002 on the recommendations of an Invaliding Medical Board, which opined that the applicant was suffering from 'Spondyloarthropathy' which was assessed at 40% for life. The applicant's claim for the disability pension was rejected by the Pension Sanctioning Authority vide letter dated 20th November 2003 (Annexure A6). Consequently, the applicant preferred first appeal before the first appellate authority which was also rejected vide letter dated 12<sup>th</sup> September 2005 (Annexure A11). The second appeal preferred by the

applicant was also dismissed vide letter dated 29<sup>th</sup> August 2006 (Annexure A14). The applicant made another attempt for reconsideration of the matter by moving a representation which was rejected vide letter No.2802093/SR/PG-3(DP) dated 11<sup>th</sup> August 2010 (Annexure A15). In view of the fact that the applicant's claim for the disability pension was not allowed, he filed the instant Original Application.

3. In paragraph 4.3 of the Original Application, the applicant has stated that he was badly beaten on 25<sup>th</sup> February 2002 at 11.30 hours by his Instructor Havildar Jayaram Dute with a hockey stick and he told the applicant that he would teach Hindi. Consequently, due to beating the applicant was badly injured. But no treatment was provided to him. It is also alleged in the said paragraph that on 26<sup>th</sup> February 2002 while he was undergoing recruits training (Monkey Rope) he fell down from height and became unconscious and was initially admitted at the Military Hospital, Belgaum.

4. The learned counsel for the applicant submitted that the aforesaid disability occurred to the applicant due to the falling down from height during Monkey Rope Training and as such the disability was attributable to, and at least aggravated by, the military service. The learned counsel further submitted that the story of falling down in the aforesaid manner was raised by the applicant in the first memo of appeal (Annexure A7), which is re-produced as follows:

*"3. I was enrolled in the MLI on 28.01.2002 as per recruitment procedure including medical fitness. I was very much health when I joined the MLI. I was attending the Basic Trg in the Centre successfully without any problem. On 25.03.2002 (sic.26.02.2002) practising Monkey rope, suddenly this accident was accrued, and then admitted to Hospital. It is very clear that the accident was accrued while performing the duty and am very much eligible for disability pension."*

5. The learned counsel further submitted that the

aforesaid ground was raised in the second memo of appeal (Annexure A12) also, which is re-produced as follows:

*"1. . . . .On 25/3/2002 (sic. 26.02.2002) I was practising Monkey rope, suddenly this accident occurred. I admitted to the hospital immediately. It is very clear that the accident was occurred while performing the duty and I am very much eligible for disability pension."*

6. Counsel for the applicant next submitted that none of the appellate authorities give any due consideration to the aforesaid allegation nor anything has been expressed relating thereto in the rejection order. The first appellate order is on record as Annexure A11, para 2 whereof being relevant on the point, is reproduced as follows:

"On perusal of your service/medical documents, the committee has found that your Invaliding disability "Syondylo Arthropathy" is a constitutional disorder which is neither attributable to nor aggravated by military service. Therefore, you are not entitled to disability pension as per Regulation 173 of the Pension Regulations for the

Army, Part-1, 1961. Accordingly, the ACFA has not accepted your appeal. If you are not satisfied with the decision of the Committee, you may prefer second appeal to Defence Minister's Appellate Committee on pension through your Record Office within six months from the date of issue of this letter.”.

The second appellate order is on record as Annexure A14.

The relevant portion thereof is as follows:

“I am directed to refer to your appeal dated 17.2.2006 on the above subject and to say that the same has been considered afresh by Defence Minister's Appellate Committee on Pension.

2. The Committee has, however, not found any ground to alter the decision of the First Appellate Committee communicated to you vide Service Hqrs. Letter No.B/40502/839/04/AG/PS-4(imp-II) dated 12 Sep 2005.”.

7. The counsel for the applicant lastly submitted that the applicant had been subjected to a thorough medical check up and investigation at the time of his recruitment to the Army. But no such disability was found. More so, the disability occurred within two months of the applicant's

enrollment to the Army, and a possibility could not be ruled out that the disability occurred due to the aforesaid incident.

8. The counsel for the respondents, on the other hand, submitted that the story of beating up by the Instructor has been stated for the first time in the Original Application. No such allegation was made in both the memo of appeals. The counsel for the respondents next submitted that the story of the falling down during the Money Rope Training has also been cooked up for the purposes of this case. Neither the Medical Board proceedings nor the papers prepared by the Command Hospital, Pune disclosed any such happening.

9. So far as the story with regard to beating up by the Instructor Havildar Jayaram Dute with the hockey stick is concerned, it appears to us as an after thought story. This

story was not stated earlier by the applicant while filing first and second appeal and also in the last representation preferred by him. Therefore we are not inclined to accept the contention of the applicant so far as the story of beating up is concerned.

10. The question whether or not the applicant had fallen down during the Monkey Rope Training, was the paramount question to be looked into by the first and second appellate authorities. But they have failed to consider that aspect of the matter and therefore the point raised by the applicant remained unconsidered. It is most relevant to mention that the respondents have not stated anything with regard to the applicant's assertion on the point of his falling down during the Monkey Rope Training despite the fact that applicant had specifically pleaded the relevant facts in para 4.3 of the O.A. In this way, the applicant's pleading has not been denied by the respondents and the same is to be treated as admitted. It is well settled that



when a pleading is not specifically denied by the opposite party or he keeps silence on any specific plea, it is presumed that he does not dispute the plea and as such the same is treated as admitted. It is also significant to mention that the medical authorities as also appellate authorities had to see whether or not the applicant had sustained any injury due to falling from height. But they have not done so. If the applicant's assertion was correct, it was also to be considered as to whether the injury due to falling from height, was instrumental in resulting or aggravating the aforesaid disability? But this aspect has also not been considered either by the Medical Board or appellate authorities.

11. The learned counsel for the respondents tried to contend that the story of falling down from height during Monkey Rope training was a concocted story, especially when the form filled in by the applicant for Medical Board's

proceeding was blank in this regard. More so, the applicant had not stated that aspect of the matter even while narrating the summary in the Command Hospital, Pune.

12. In our view, we are not required to examine the correctness of the allegations. It was for the appellate authorities as also other authorities who were competent in the matter to hold an inquiry and to find out as to whether or not the allegations made by the applicant were correct. But they have not done so and rejected the applicant's claim for the disability pension only on the basis of the medical opinion, which in view of the allegations made by the applicant, was not the sole evidence.

13. The counsel for the respondents lastly pointed out some discrepancy in the date mentioned in the memo of appeals and the Original Application with regard to the aforesaid falling down incident.

14. In the memo of appeal the date of the incident is mentioned as 25<sup>th</sup> March 2002, whereas in the Original Application the date is 26<sup>th</sup> February 2002. The counsel for the respondents submitted that the date 25<sup>th</sup> March 2002 was apparently wrong in view of the fact that on that date the applicant was in the Pune Hospital. In this connection the counsel for the applicant submitted that the wrong date was transcribed in both the memo of appeals due to typing error which was corrected in the Original Application as 26<sup>th</sup> February 2002, which finds support from the affidavit dated 17<sup>th</sup> November 2012 of one No.2802063P Sepoy Husenbasha Rajesab Gudagi (Annexure A16). The submission of the learned counsel for the applicant seems to have much substance. In our view, the aforesaid discrepancy of date appears to be a typing error. At this stage, we do not consider it proper to express any opinion regarding the reliability of the statement made by the aforesaid Mr.H.R.Gudagi by way of the aforesaid affidavit and it is for the appropriate authorities to see and examine the

correctness thereof while considering the applicant's case in the light of the incident narrated by him.

15. In view of the aforesaid, the matter has to go back to the first appellate authority for reconsideration in the light of the observations made hereinbefore.

16. The Original Application is allowed. The first appellate order vide No.B/40502/839/04/AG/PS-4(Imp-II) dated 12<sup>th</sup> September, 2005 (Annexure A11) and the second appellate order vide letter No. 1(152)2006/D(Pen-A&AC) dated 29<sup>th</sup> August 2006 (Annexure A14) are quashed. The first appellate authority is directed to reconsider the matter in the light of the observations made hereinbefore and pass appropriate reasoned order afresh in accordance with law expeditiously, preferably within six months. It will be open to the appellate authority to constitute an Appeal Medical Board, if considered necessary, for proper adjudication of the matter. It is also made clear that the appellate

authority may also get the matter inquired into with regard to the incident of the applicant's falling down from height during Monkey Rope Training on 26<sup>th</sup> February 2002, before recording its final conclusion.

17. There will be no order as to costs.

18. Issue copy of the order to both side.

LT.GEN.THOMAS MATHEW  
MEMBER (A)

JUSTICE SHRIKANT TRIPATHI  
MEMBER (J)

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