

# **ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**

O.A. No.127 OF 2012

THURSDAY, THE 6TH DAY OF DECEMBER, 2012/15TH AGRAHAYANA, 1934

CORAM:

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

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

## **APPLICANT:**

EX.RECT. MAHIBOOB JILAN, NO.2610672 K, S/O.MOHAMMED HUSSAIN,  
AGED ABOUT 29 YEARS, NEAR GOVT. HOSPITAL ROAD,  
KURDI VILLAGE AND POST, MANVI TQ; RAICHUR DT.  
KARNATAKA – 584 203.

BY ADV. SRI. M. NARAYANA AND SRI. BINU PAUL.

***versus***

## **RESPONDENTS:**

1. UNION OF INDIA, MINISTRY OF DEFENCE,  
SOUTH BLOCK, DHQ, NEW DELHI – 110 011.
2. CHIEF OF THE ARMY STAFF, SOUTH BLOCK,  
DHQ, NEW DELHI 110 011.
3. CHIEF CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS),  
DRAUPADI MARG, ALLAHABAD, UTTAR PRADESH – 211 014.
4. THE COMMANDANT, MADRAS REGIMENT CENTRE,  
POST BAG NO.1, WELLINGTON, NILGIRIS – 643 231.
5. SENIOR RECORD OFFICER, MADRAS REGIMENT CENTRE,  
POST BAG NO.1, WELLINGTON, NILGIRIS – 643 231.

R1 TO R5 BY SR. PANEL COUNSEL SRI. K.M. JAMALUDEEN.

## **ORDER**

### **Shri Kant Tripathi, Member (J):**

The applicant, Mahiboob Jilan, No.2610672 K, has claimed disability pension. The applicant was enrolled in the Army on 11.9.2002.

During the training, he fell ill and was consequently medically examined and the medical authorities diagnosed that he was suffering from Aspergilloma, a case of Pulmonary Tuberculosis. Accordingly the applicant was boarded out of service on 30<sup>th</sup> August, 2003. The Medical Board opined that the disability occurred due to severe physical stress and strain of recruit training and accordingly, the disease was aggravated due to service. The Board assessed the disability at 100% for one year. The applicant's case for disability pension was processed by the respondents, but it was denied on the ground that audit authority, PAO (OR), Madras Regiment, found that according to the medical board itself, the disability was in existence prior to the applicant's enrolment in the Army and therefore, the disability pension prayed for was denied.

2. Learned counsel for the applicant submitted that the Medical Board nowhere opined that the disability had been in existence prior to the applicant's recruitment. No doubt, the Medical Board expressed the view that, it could be existing even prior to the recruitment, therefore, the Medical Board was not certain on this point and as such mentioned the words "could be". In this view of the matter, it is a case of doubt as to whether the disease existed even prior to enrolment or not, and, the benefit of doubt, if any, had to be given in favour of the applicant.

3. Learned counsel for the applicant further submitted that final opinion of the Medical Board was in favour of the applicant. The Board assessed the disability at 100% for one year and further opined that the disability had aggravated due to military service. Therefore, the opinion of the Medical Board ought to have been followed and as such the pension sanctioning authority was not justified in giving weight to the words "could be" mentioned in the proceedings of the Medical Board in reply to the question "Did the disability exist before entering service?".

4. Learned counsel for the applicant placed reliance on the following judgments of the Apex : (i) **Controller of Defence Accounts (Pension) vs. Balachandran Nair**, 2005(4) KLT 703 (SC); (ii) **Secretary, Ministry of Defence and Others vs. A.V.Damodaran (Dead) through LRs and Others**, (2009) 9 SCC 140; (iii) **Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samithy and others** (2010) 3 SCC 732, (iv) **Union of India and Others vs. Talwinder Singh** (2012) 5 SCC 480, and also the decision of the Division Bench of the Delhi High Court in **Navin Chandra vs. Union of India and Others**, decided on 27<sup>th</sup> July, 2006.

5. It is the well settled legal position that opinion of the Medical Board should be given due weight, value and credence. In order to overrule the Medical Board's opinion there must be clinching evidence

otherwise, particularly the medical evidence. The audit authority, who had no medical expertise had no power to overrule the opinion of the three doctors constituting the Medical Board. If there was any doubt at all about the genuineness of the opinion of the Medical Board, the proper course for the authorities was to seek the opinion of a Superior Medical Board constituted by qualified and senior doctors, instead of relying on the objections raised by the audit authority, PAO (OR).

6. In view of the aforesaid, we have no option except to quash the decision of the respondents denying disability pension to the applicant and remit the matter for reconsideration.

7. The Original Application is allowed. The respondents are directed to reconsider the matter and pass appropriate orders afresh in accordance with law and also keeping in view the observations made herein before.

8. No order as to costs.

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

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

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

DK.

(True copy)

Prl. Private Secretary