

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI

O.A.NO.131 OF 2010

WEDNESDAY, THE 5TH DAY OF DECEMBER, 2012/14TH AGRAHAYANA, 1934

CORAM:

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

APPLICANT:

EX NK RASHEED M.C. (14529423)
AGED 51 YEARS, THREE "S" COTTAGE,
KEECHERI, P.O.ANCHAMPEEDIKA,
DIST.KANNUR, KERALA – 670 331.

BY ADV.SRI. T.R.JAGADEESH.

VERSUS

RESPONDENTS:

1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI.
2. THE CHIEF OF THE ARMY STAFF,
INTEGRATED HQRS. OF MOD (ARMY),
DHQ.P.O., NEW DELHI – 110 001.
3. RECORD OFFICER, EME RECORDS,
SECUNDERABAD – 21.
4. THE PRINCIPAL CONTROLLER OF DEFENCE
ACCOUNTS (PENSION), OFFICE OF THE
P.C.D.A.(P), DRAUPADI GHAT, ALLAHABAD, U.P.

BY ADV.SMT.E.V.MOLY, CENTRAL GOVT. COUNSEL

O R D E R

Shrikant Tripathi, Member (J):

1. Heard Sri.T.R.Jagadeesh for the applicant and Smt.E.V.Moly for the respondents and perused the record.

2. By this petition under Section 14 of the Armed Forces Tribunal Act, the applicant Ex Naik Rasheed.M.C. (No.14529423) has claimed disability pension from 24th April 1993 to 13th October 2005 for his 40% disability as determined by the Re-survey Medical Board.

3. The applicant was enrolled in the Army (Corps of EME) on 7th February 1978 and was discharged from service with effect from 31st August 1991 in accordance with para 2 of Army Order 46/80, as the applicant was in permanent low medical category CEE, due to disability 'Seronegative Poly Arthritis (Post Dysetric) Old'. As per the opinion of the

Release Medical Board his request for disability pension was considered. It is also significant to mention that the disability was assessed at 40% for two years and was attributable to the military service. Accordingly applicant was sanctioned disability pension initially for a period of two years. On expiry of the said period of two year, the applicant was required to appear before the Re-survey Medical Board. Re-survey Medical Board could not be held on account of some slackness on the part of the applicant in making compliance of the direction to appear. However, the Re-survey Medical Board was held on 14th October 2005. The Re-survey Medical Board opined that the aforesaid disability of 40% was for life and accordingly recommended the applicant's case for disability pension for life. On the recommendations of the Re-survey Medical Board, the PCDA (P), Allahabad sanctioned the disability element of pension to the applicant with effect from 14th October 2005 only and he is in receipt thereof. However the PCDA (P), Allahabad

rejected the applicant's claim for the disability element of pension from 24th April 1993 to 13th October 2005 on the ground that the Re-survey Medical Board had not recommended grant of pension for the said period.

4. A copy of the opinion of the Re-survey Medical Board has been filed by the respondents as Annexure R1. At page 5 of the said opinion, the Re-survey Medical Board has very clearly stated in the Column 7 (duration of assessment) 'with effect from 14th October 2005' and also specified that 'for interim period with effect from 24th April 1993 to 13th October 2005' for life long and permanent. In this way the Re-survey Medical Board assessed the disability not only with effect from 14th March 2005 but also for interim period from 24th April 1993 to 13th October 2005. Therefore the stand of the PCDA (P), Allahabad does not appear to be correct. The applicant's 40% disability, after the expiry of the initial period of two years, continued for life long and was assessed permanent and the opinion of the

Re-survey Medical Board is very specific on this point. More so, the INHS Sanjivani had also recommended the applicant's case for sanction of the disability element of pension with effect from 24th April 1993 to 13th October 2005. A copy of the letter of INHS Sanjivani dated 4th August, 2009 is on record as Annexure A7. Therefore neither the PCDA(P), Allahabad nor any other respondents can be said to be justified in denying 40% disability element of pension to the applicant for the period 24th April 1993 to 13th October 2005. The applicant's claim for the disability element of pension for the said period is fully proved and is liable to be allowed.

5. The Original Application is allowed. The respondents are directed to pay the disability element of pension at the rate of 40% disability with effect from 24th April 1993 to 13th October 2005 to the applicant within four months from today. In case the due amount is not so paid,

the applicant will be entitled to recover interest on the unpaid amount at the rate of 7% per annum from the respondents till the date of actual payment of the unpaid amount.

6. There will be no order as to costs.

7. Issue copy of the order to both side.

LT.GEN.THOMAS MATHEW
MEMBER (A)

JUSTICE SHRIKANT TRIPATHI
MEMBER (J)

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