

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O A No.141 OF 2010

MONDAY, THE 3RD DAY OF DECEMBER, 2012/12TH AGRAHAYANA, 1934

CORAM:

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

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

APPLICANT:

LIEUTENANT COLONEL T. VARGHESE, AGED 68 YEARS,
No.MR 2942 P of AMC INDIAN ARMY,
T.C. No.10.540, MANGALATHU, PEROORKADA,
THIRUVANANTHAPURAM, KERALA- 695 005.

BY ADV. SRI. V.K. SATHYANATHAN.

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI.
2. THE CHIEF OF ARMY STAFF,
INTEGRATED HEAD QUARTERS (ARMY), NEW DELHI.
3. THE ADJUTANT GENERAL,
ADJUTANT HEADQUARTERS (ARMY), NEW DELHI.
4. THE DIRECTOR GENERAL OF MEDICAL SERVICES (ARMY),
OFFICE OF THE DIRECTOR GENERAL OF MEDICAL SERVICES (ARMY),
INTEGRATED HEAD QUARTERS (ARMY), NEW DELHI.
5. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS),
OFFICE OF THE P.C.D.A.(P), DRAUPADI GHAT,
ALLAHABAD, U.P.

R1 TO R5 BY SR. PANEL COUNSEL SRI. P.J.PHILIP

ORDER

Shri Kant Tripathi, Member (J):

Heard Mr. V.K. Sathyanathan, for the applicant and Smt.E.V.Moly, representing Sri.P.J.Philip, who has been reported to be sick, for the respondents.

2. The applicant, Lt.Col.T.Varghese, has filed this Original Application for a direction to the respondents to pay him the disability pension for 80% disability rounding off the same to 100% from the date of retirement.

3. The applicant, who was a Lieutenant Colonel, superannuated from the Army on 30.4.1998 was required to appear before a Release Medical Board. Accordingly, a Release Medical Board was held and the Medical Board found the following disabilities:

- “(a) Essential Hypertension – 30% aggravated by military service for 2 years*
- (b) osteoarthritis both knee – 20% attributable to military service for 2 years*
- (c) Cervical Spondylosis – 20% attributable to military service for 2 years*
- (d) Tuberculosis Lymphadenopathy*
(Rt) Cervical – 20% attributable to military service for 2 years.”

The Release Medical Board has assessed the composite degree of disablement of the applicant at 80%.

4. It is significant to mention that the applicant was also a psychiatric specialist. However, the applicant's case was referred to the

adjudicating authority, DDG (Pension) on 28.10.2008. The said authority consulted its medical expert team, comprising of a single doctor, who was of the rank of Lt.Colonel only, superseded the opinion of the Release Medical Board, notwithstanding the fact that the Medical Board was constituted with a team of three doctors, headed by a Brigadier and the other two doctors were of the ranks of Lt.Colonel and Major respectively. On such consultation, the medical expert team reduced the disability to 40%, but extended the period of disability from two years to five years, and also opined that the disability of Essential Hypertension and Cervical Spondylosis were neither attributable to nor aggravated by military service and further held that the other two disabilities were, however, aggravated by/attributable to service. The matter remained pending for quite long time on account of the fact that file pertaining to the applicant was missing, but it was anyhow traced out and the matter proceeded further towards consideration of the applicant's case.

5. Mr.V.K.Sathyanathan, today produced a copy of PPO No.M/DIS/125/2011 issued by the Principal Controller of Defence Accounts (Pension), Allahabad and informed that whatever disabilities had been assessed by the Release Medical Board were ultimately accepted by the Pension Sanctioning Authority and accordingly the applicant has been sanctioned disability element of pension at 80% for

two years with effect from 1.5.1998. In this view of the matter, the applicant has already been sanctioned disability element of pension as per his desires, and also according to the recommendation of the Release Medical Board, therefore, nothing remains to be adjudicated upon with regard to the disability pension pertaining the aforesaid period of two years.

6. So far as the question of rounding off of the disability of pension from 80% to 100% is concerned, the applicant's case cannot be accepted. The rounding off benefit has been extended to those whose tenure have been cut short due to their premature discharge before the expiry of their terms of engagement. There are few decisions on the point. In **P.K.Kapur vs. Union of India and others** (2007) 9 SCC 425, the Apex Court held that, "The benefit of enhancement is given to those officers who stood invalided out of service because their tenure of service got cut due to invalidment on account of disability or war injury" and further held that, the benefit is not available to those who completed their normal tenure of service. Recently, in **Union of India and Others Vs. NK.Narikar** (Civil appeal No.8433-8434 of 2009) decided on 24.5.2012, the Apex Court re-iterated the aforesaid principle rendered in **P.K.Kapur** (supra) and held that the respondents who had completed his tenure in the Army

and retired was not entitled for the relief. However, there is a contrary view expressed by the Apex Court in **K.J.S.Buttar vs. Union of India**, [JT 2011 (3) SC 626], which has allowed the benefit to all, whether retired or prematurely retired on account of the disability. It is also significant to mention that the Principal Bench in O.A.No.292 of 2011, **Ex Sep Rambir Singh vs. Union of India and Others**, decided on 10th October, 2012, considered all the said three decisions of the Apex Court and held that the view expressed in **NK.Narikar** (supra), being the latest, was liable to be followed. The Principal Bench further noticed that the first case on the point was that of **P.K.Kapur** (supra), but the said decision was not before the Apex Court in **K.J.S.Buttar's** case (supra). The Principal Bench further found that K.J.S.Buttar's case was not brought before the Apex Court in **NK.Narikar's** case (supra). In this view of the matter, in our view, the decision rendered in **P.K.Kapur** (supra) and **NK.Narikar** (supra) are liable to be applied in the present matter. As such, the principle of rounding off, as claimed by the applicant, is not attracted in his case. The applicant's case for rounding off of the percentage of disability has no substance.

7. Mr.V.K. Sathyanathan, next submitted that according to Para 7

of the Government of India, Ministry of Defence Letter No.97/D/(Pen-C) dated 7.2.2001, the applicant was not required to appear before any Re-Assessment Medical Board and his disability ought to have been treated as permanent. In order to consider this submission, it seems to be just and expedient to reproduce the contents of para 7 of the aforesaid Government Letter, which reads as follows:

"7. Reassessment of Disability-

There will be no periodical review by the Resurvey Medical Board for reassessment of disabilities. In cases of disabilities adjudicated as being of a permanent nature, the decision once arrived at will be final and for life unless the individual himself requests for a review. In cases of disabilities which are not of a permanent nature, there will be only one review of the percentage by a Reassessment Medical Board to be carried out later within a specified time frame. The percentage of disability assessed/recommended by the Reassessment Medical Board will be final and for life, unless the individual himself asks for a review. The review will be carried out by the Review Medical Board constituted by DGAFMS. The percentage of disability assessed by the RMB will be final."

A perusal of the aforesaid contents of the letter transpires that if the disabilities are adjudicated as permanent in nature, the decision once taken will be final and in that eventuality, no Reassessment Medical Board is to be held. But in the cases of disabilities which are not of a

permanent nature, there has to be atleast one Review of the percentage of disability by the Reassessment Medical Board. In the present matter, the Release Medical Board opined that the applicant's disabilities were not permanent and was for only two years, therefore, the disability and its percentage are required to be reassessed by a Re-Assessment Medical Board.

8. Mr.V.K.Sathyanathan, relied upon the judgment of the Principal Bench rendered in M.A.No.461 of 20110 (T.A.No.613 of 2010/Writ Petition (Civil) No.2605 of 1989) in the matter of **Havildar Rajinder Kumar Gupta vs. Union of India and Others**, decided on 9th July, 2012, and submitted that in the said case, para 7 of the aforesaid Government Letter was applied, though the disability was found for two years only. In our view, the judgment of the Principal Bench is merely an interim order, passed in an execution matter. More so, the Principal Bench proceeded as if the disability was permanent in nature and accordingly, applied Para 7 of the aforesaid Government Letter. But, in the present case, the disability was not permanent in nature and as such, the decision of the Principal Bench is distinguishable.

9. Mr.V.K.Sathyanathan, next informed that the disability element of pension at the rate of Rs.2080/- per month plus Dearness Relief payable thereon has already been sanctioned by the Office of the

P.C.D.A.(P), Allahabad for two years with effect from 1.5.1998. The sanction order was issued in the year 2011, after a gap of more than 13 years. Therefore, the applicant was deprived of the benefit of the said money atleast from the date of expiry of the aforesaid period of two years. The counsel for the applicant therefore, submitted that the pension with Dearness Relief may be directed to be paid with interest. It was also submitted that the purchasing capacity of money due to inflation etc has materially come down from 2000 to 2011. Had the applicant received the entire amount in the year 2000, he would earn a sizeable amount from the money. In view of these factual aspects of the matter, we consider it just and expedient to direct the respondents to pay interest at the rate of 07% per annum on the entire amount of disability element of pension and dearness relief with effect from 1.5.2000 till the date of actual payment in addition to the amount of pension and Dearness Relief. The O.A. is liable to be disposed of accordingly.

10. The Original Application is disposed of with a direction to the respondents to pay 07% interest per annum on the entire amount of disability element of pension and dearness relief payable thereon, with effect from 1.5.2000 to the applicant. The respondents are further directed to calculate the interest and make the payment thereof

alongwith the principal, if not, already paid, within four months from today. In case, the payment of the principal and/or interest is not made within the said time, the unpaid amount will carry a further interest of 07% per annum. So far as the question of constitution of Re-Assessment Medical Board is concerned, it is directed that Re-Assessment Medical Board shall be constituted as expeditiously as possible, at any rate within four months from today and the applicant may be required to appear before the said Board for re-assessment of the disability in terms of para 7 of the aforesaid Government Letter, on the date, time and place to be fixed and informed to the applicant by registered post by the respondents. In case the Re-Assessment Medical Board finds that the aforesaid disability is still existing, the applicant's case for the sanction of the disability element of pension with effect from 1.5.2000 may also be given due consideration in accordance with the rules, regulations and orders applicable to the case.

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

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

DK.

(True Copy)

Prl. Private Secretary