

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI

O.A.NO. 146 OF 2010

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

CORAM:

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

APPLICANT:

P.PAVITHRAN, AGED 73 YEARS,  
NO.7036129 Y, EX-HAV, EME,  
EDAYILAVEEDU (RESHMA NIVAS),  
CLAPPANA NORTH, CLAPPANA.P.O.,  
KARUNAGAPPALLY, DISTRICT QUILON,  
KERALA STATE, PIN - 690 525.

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 DIRECTORATE GENERAL OF EME (EME PERS),  
MASTER GENERAL OF ORDNANCE BRANCH  
ARMY HEADQUARTERS, DHQ PO,  
NEW DELHI - 110 011.

4. THE CHIEF CONTROLLER OF DEFENCE  
ACCOUNTS (PENSION), DRAUPADI GHAT,  
ALLAHABAD,UTTARPRADESH – 211 014.

5. THE OFFICER IN CHARGE (RECORDS),  
THE RECORDS EME, SECUNDERABAD,  
ANDHRA PRADESH – 500 021..

BY ADV.SRI.P.J.PHILIP, CENTRAL GOVT. COUNSEL

O R D E R

Shrikant Tripathi, Member (J):

This is a petition for sanction and disbursement of disability pension. The applicant No.7036129 Y, had joined the Indian Army on 21<sup>st</sup> September 1957 as a Sepoy at Electrical and Mechanical Engineering Corps Training Centre at Secunderabad and after completion of basic training and technical training, he was posted to 570 Base Workshop, Meerut, Uttarpradesh. He was discharged from service on 1<sup>st</sup> November 1978 after 21 years 01 month and 11 days of service and is in receipt of service pension since the date of his retirement. At the time of the discharge, the applicant

was found in low medical category 'CEE (Permanent) due to 'essential hypertension 401 Y -34' and 'fracture base of V metatarsal bone N-825, E-884'. The hypertension was assessed at 20% which, according to the Medical Board, was neither attributable to nor aggravated by the military service. However, the Medical Board found the fracture as attributable to service but assessed the same at 6-10% for two years. The composite disability was assessed at 30% for two years. In view of the fact that the disability fracture base of V metatarsal bone N-825, E-884 was assessed at less than 20%, therefore, the applicant's request for pension was turned down.

2. The counsel for the applicant submitted that the disability 'essential Hypertension 401 Y -34' was aggravated by the military service as the applicant's conditions of service were so tough as to aggravate the disability, therefore, denial of disability pension was not proper.

3. The opinion of the Medical Board with regard to the disability 'essential Hypertension 401 Y -34' was that it was neither attributable to nor aggravated by the military service, though it was assessed at 20%. The applicant has not been able to adduce any evidence to controvert the opinion of the Medical Board. It is also not clear as to how the conditions of service of the applicant were tough as to aggravate the disability. The other disability of fracture was assessed at 6-10% and was thus less than 20% and as such, the disability of fracture has no significance for disability pension. More so, in view of the fact that the initial disability was for a period of two years which expired 32 years back in the year 1980, therefore, it is not proper to direct for the re-opening of the case so far as the claim for disability pension for the two years period from 1978 is concerned. The counsel for the respondents pointed out that the applicant was advised by the EME Records Office to file appropriate appeal but he did not file any appeal. The

advice was given in the year 1980 but he did not proceed further till the date of the legal notice, which was given after about 30 years from the date of expiry of the disability period of two years. However, the counsel for the applicant informed that Annexures A3 to A7 representations were given by the applicant. It is not proper to see whether or not any representation had been given after 1980. But one thing is clear that the applicant did not prefer any appeal as advised by the EME Records Office. The disability pension, which is time barred, can not be granted only on the grounds of the representations given subsequently. Therefore the applicant's prayer for disability pension from 1978 to 1980 is liable to be dismissed on the ground of laches and limitation.

4. The learned counsel for the applicant next submitted that after the expiry of the aforesaid period of two years, the applicant ought to have been required to appear before a Re-assessment Medical Board for the assessment

of his further disability but it was not done, therefore, he suffered a lot.

5. It seems to be just and expedient to direct for holding of re-Assessment Medical Board for considering the applicant's case for disability pension after expiry of the aforesaid period of two years.

6. In view of the aforesaid, the respondents are directed to constitute a Re-assessment Medical Board within four months from today, giving a notice to the applicant for appearing before the Board on the date and time and at the place to be disclosed in the notice, which shall be sent by registered post. If the Re-assessment Medical Board opines that the applicant's disability continued even after the expiry of the initial period of disability of two years and is still subsisting and is more than 20% and has been attributable to or aggravated by the military service, his request for

disability pension beyond the aforesaid period of two years may be given due consideration in accordance with the rules, regulations and Government orders applicable to the case.

7. With the aforesaid observations, the Original Application is disposed of.

8. There will be no order as to costs.

9. Issue copy of the order to both side.

LT.GEN.THOMAS MATHEW  
MEMBER (A)

JUSTICE SHRIKANT TRIPATHI  
MEMBER (J)

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