

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI
O.A.NO. 11 OF 2011
FRIDAY, THE 25TH DAY OF JANUARY 2013/5TH MAGHA, 1934
CORAM:

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

JOSEPH.A.V.NO.289528 EX JWO, IAF,
AGED 64 YEARS, PUTHEN VEETIL HOUSE,
VILLAGE AND P.O.AROOR,
TEHSIL – CHERTALAI, DISTRICT – ALLEPPEY,
KERALA STATE – 688 534.

BY ADV.SRI.RAMESH.C.R.

VERSUS

RESPONDENTS:

1. THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF DEFENCE (AIR FORCE),
SOUTH BLOCK, NEW DELHI – 110 001.
2. THE CHIEF OF AIR STAFF,
INTEGRATED HQRS.,
MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI – 110 001.
3. THE WING COMMANDER,
OFFICER-IN-CHARGE P & WW (DP),
FOR AOC, AIR FORCE RECORD OFFICE,
SUBROTO PARK, NEW DELHI – 110 010.
4. THE JOINT CDA (AF),
SUBROTO PARK,
NEW DELHI – 110 010.
5. THE PRINCIPAL CONTROLLER OF DEFENCE
ACCOUNTS (PENSION), DRAUPADI GHAT,
ALLAHABAD, UTTAR PRADESH – 211 014.

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

O R D E R

Shrikant Tripathi, Member (J):

1. Heard Mr.Ramesh C.R for the applicant and Mr.K.M.Jamaludheen for the respondents and perused the record.

2. The applicant has filed the instant Original Application for the disability pension with effect from the date of his discharge.

3. The relevant facts are that the applicant Joseph A.V. EX. JWO No.289528 was enrolled in the Indian Air Force on 11th June 1966 and was discharged therefrom with effect from 30th June 1987 under the clause of fulfillment of the conditions of his enrolment. By that time he rendered 21 years 20 days of service and was therefore granted service pension vide P.P.O.No.08/14/B/10215/87. He was medically examined by a Release Medical Board which assessed his disability 'Neurosis (ICD 300)' at 20% for two years and

further opined that the disability was neither attributable to nor aggravated by the military service. The applicant's request for disability pension was examined by the PCDA (P), Allahabad which rejected the case on the ground that the disability pension was not payable in that matter. The applicant did not prefer any appeal and kept silent and filed the instant Original Application after about 23 years from the date of rejection by the PCDA (P).

4. Mr.Ramesh appearing for the applicant submitted that according to the Entitlement Rules for the Pensionary Awards, 1948 Neurosis could occur due to military service, therefore, there was no justification to deny disability pension to the applicant.

5. Mr.K.M.Jamaludheen, on the other hand, submitted that the discharge was made on 30th June 1987 but the applicant did not file any appeal and slept over the matter for more than 23 years. More so, the entire original records have already been destroyed on expiry of the retention

period of 15 years.

6. The opinion of the Medical Board is against the applicant. More so, the disability was only for two years which expired on 30th June 1989 and after that there was no disability according to the Medical Board's opinion. We have already examined the relevancy of the Medical Board in O.A.No.100 of 2012 and connected cases and have rendered a detailed judgment. The relevant observations are as follows:

“7. In order to appreciate the controversy involved in these matters, we have to examine various decisions relied upon by the counsel for the parties and they are:

1. **Union of India & Ors. vs. Keshar Singh**, (2007) 12 SCC 675;

2. **Union of India & Ors. vs. Surinder Singh Rathore**, (2008) 5 SCC 747;

3. **Secretary, Ministry of Defence and Ors. vs. A.V.Damodaran (Dead) through LRs. and others**, (2009) 9 SCC 140;

4. **Union of India & Ors. vs. Jujhar Singh**, (2011) 7 SCC 735;

5. **Union of India and Anr. vs. Talwinder Singh**,

(2012) 5 SCC 480;

6. **Baby vs. Union of India** 2003 (3) KLT 362 (FB).

17. The legal position as emerged out from the aforesaid decisions is shortlisted as follows:

(i) The disability pension is payable only when the disability has occurred due to wound, injury or disease which is attributable to military service or existed before or arose during military service and has been and remains aggravated during the military service and recorded as such by the service medical authorities.

(ii) The opinion of the Medical Board should be given primacy in deciding cases of disability pension. In case the Medical Authorities record the specific finding that the disability was neither attributable to nor aggravated by the military service, the court should not ignore such a finding for the reason that Medical Board is specialized authority composed of expert medical doctors and it is a final authority to give opinion regarding attributability and aggravation of the disability due to the military service and the conditions of service resulting in the disablement of the individual. As such, the opinion of the Medical Board must be given due weight, value and credence.

(iii) When an individual is physically fit at the time of enrollment and no note regarding adverse physical factor

is made at the time of entry into service and if the individual is discharged before the completion of full tenure on account of his physical disability, the initial onus of proving that the disability is not attributable to the Military Service shall be on the authority. However, in the cases where it is found on perusal of the available evidence that the individual had withheld relevant information or that the service conditions were not such as could have resulted in physical disability, the onus shall shift to the claimant.

(iv) The disease which has led to the individuals discharge will ordinarily be deemed to have arisen in the course of service if no note of it was made at the time of individual's acceptance for military service. However, the above deeming fiction is not available to the individual if the medical opinion, for the reasons to be recorded, hold the disease could not have been detected on medical examination prior to the claimant's acceptance to the service.

(v) A person claiming disability pension must establish that the disease or injury suffered by him bears a causal connection with the military service.

(vi) The direct and circumstantial evidence of the case is to be taken into account and the benefit of doubt if any is to be given to the individual.

(vii) A liberal approach is to be adopted in the matter of services rendered in the field areas."

7. The question of attributability or aggravation is to be decided according to the conditions of the service in which the applicant had served. The applicant has nowhere stated that he had been posted in field areas or in some other tough area during the period he sustained the disability.

8. In view of the aforesaid the opinion of the Medical Board that the disability was constitutional seems to be correct and requires no interference.

9. As observed above, the Original Application has no merit and is accordingly dismissed.

10. There will be no order as to costs.

11. Issue free copy of the order to both side.

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

an.

(true copy)

Sd/-
JUSTICE SHRIKANT TRIPATHI
MEMBER (J)

Prl.Pvt.Secretary