

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

O A No. 17 of 2010

FRIDAY, THE 25TH DAY OF JANUARY, 2013/5TH MAGHA, 1934

CORAM:

HON'BLE MR. JUSTICE SHRI KANT TRIPATHI, MEMBER (J)  
HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

**APPLICANT:**

No.13682515, EX.NK.AJITHA KUMAR K.B.,AGED 48 YEARS,  
THE RECORDS, BRIGADE OF GUARDS,

**PRESENT ADDRESS:**

MUNDAYAKONATH VEEDU, CHELLAMCODE, POOVATHUR P.O.,  
NEDUMANGAD, THIRUVNANTHAPURAM, KERALA.

BY ADV. SRI. SREEKANTH S. NAIR.

***versus***

**RESPONDENTS:**

1. UNION OF INDIA, REPRESENTED THROUGH THE  
SECRETARY, MINISTRY OF DEFENCE,  
SOUTH BLOCK, NEW DELHI - 11.
2. THE DEFENCE MINISTER APPELLATE COMMITTEE ON PENSIONS,  
(DMACP), MINISTRY OF DEFENCE, NEW DELHI.
3. APPELLATE COMMITTEE ON FIRST APPEAL (ACFA),  
INTEGRATED H.Q. OF MOD. (ARMY),  
DHQ P.O., NEW DELHI – 110 011.
4. CCDA (P), ALLAHABAD.
5. ADDL. DTE. GEN. PERSONNEL SERVICES,  
ADJUTANT GENERAL BRANCH,  
INTEGRATED HQ OF MOD (ARMY), DHQ P.O.,  
NEW DELHI – 110 011.
6. RECORDS, BRIGADE OF THE GUARDS,  
PIN 900746, C/O.56 APO.

R1 TO R6 BY ADV. SRI. TOJAN J. VATHIKULAM, CENTRAL GOVT. COUNSEL

**ORDER**

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

None is present for the applicant. Heard Mr.Tojan J.Vathikulam for the respondents and perused the record.

2. The applicant has filed the instant O.A. for disability pension. The relevant facts are that the applicant was enrolled in the Army in the rank of Sepoy on 18<sup>th</sup> June, 1981 and was discharged therefrom on 1<sup>st</sup> November, 2001 due to the disability, "Schizophrenia", which according to the Medical Board was constitutional and was neither attributable to nor aggravated by the military service, therefore, the applicant's claim for disability pension was denied. His first and second appeals were also dismissed.

3. We have already examined the relevancy of the opinion of the Medical Board in O.A. No.130 of 2010 (leading case) decided on 17<sup>th</sup> January 2013 and after considering the relevant case laws on the point have expressed the following views:

"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).

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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 specialised 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 enrolment 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."

4. Therefore, what was required from the applicant was to say that the conditions of service were instrumental in causing the disability

to the applicant, but according to the record, the applicant's posting at the relevant time was at the peace station only, therefore, the disability did not occur due to service conditions and as such, the same was neither attributable to nor aggravated by military service. The opinion of the Medical Board, which is against the applicant, is to be given due weight, value and credence and cannot be lightly discarded only on the basis of the oral submissions especially when the applicant had been posted at peace station.

5. Accordingly, the O.A. has no merit and it is dismissed.

6. There will be no order as to costs.

7. Issue free copy of this order to both side.

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

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

DK.

(True copy)

Prl. Private Secretary