

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O A No. 35 OF 2011

WEDNESDAY, THE 9TH DAY OF JANUARY, 2013/19TH POUSHA, 1934

CORAM:

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

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

APPLICANT:

MATHEWS P.T., AGED 77 YEARS,
S/O.LATE P.T. THOMAS, EX SEPOY NO.S/M.6277624,
NOW RESIDING AT:

PALLATHUKIZHAKETHIL HOUSE,
KOCUKULANJI P.O.,
ALAPPUZHA DISTRICT,
KERALA STATE – 689 508.

BY ADV. SRI. M.V. THAMBAN & SMT.THARA THAMBAN

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY
THE SECRETARY, MINISTRY OF DEFENCE,
NEW DELHI - 11.
2. THE CHIEF OF ARMY STAFF, ARMY HEADQUARTERS,
(SENA BHAVAN), NEW DELHI – 11.
3. THE OFFICER IN CHARGE RECORDS,
RECORD OFFICE, CORPS OF SIGNALS,
JABALPUR, MADHYA PRADESH – 482 001.
4. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSION),
DRAUPADI GHAT, ALLAHABAD – 211 014.

R1 TO R4 BY ADV. SRI. S. KRISHNAMOORTHY, SR. PANEL COUNSEL

ORDER

Shri Kant Tripathi, Member (J):

1. The rejoinder filed today is taken on record.
2. Heard Ms. Thara Thamban for the applicant and Mr.S.Krishna-
moorthy for the respondents and perused the record.

3. The applicant, Mathews P.T., Service No.6277624, has filed the instant O.A. for disability pension and also service element of disability pension with effect from 1.8.1968 with 18% interest.

4. The applicant was enrolled in the Indian Army as a Signaller on 15.2.1960 in the Corps of Signals. While playing the football he sustained a knee injury, consequently, he was examined by an Invaliding Medical Board, which assessed the disability attributable to service at 30% for two years. Accordingly, the applicant was boarded out from the service and was sanctioned disability pension with effect from the date of discharge for a period of two years. The Medical Board had also opined that the disability pension was to be re-assessed on the expiry of the said period of two years and as such the applicant was required to appear before a Re-Survey Medical Board, but he did not appear on the ground that he was in the service of a company at Bombay and had no time to attend the Re-Survey Medical Board, therefore, he submitted the letter dated 4.12.1968 (Annexure R6) to the concerned Record Office showing his inability to attend the Re-Survey Medical Board and further informed that he was not interested to draw the pension being paid at that point of time. Therefore, he had foregone the pension.

5. Miss Thara Thamban appearing for the applicant submitted that whatever disability the applicant had sustained while in the service

is still existing in the old age of 70 years and the applicant has no adequate means to lead a normal life, therefore, his case may be directed to be re-considered so that the applicant may get appropriate financial assistance from the Government in the form of disability pension/service element of the disability pension.

6. Mr.Krishnamoorthy, on the other hand, submitted that in view of the fact that the applicant had given up the pension which was sanctioned to him vide the letter, Annexure R6, and slept over the matter for about three decades without pressing for his grievances, it would not be proper to provide him the relief for the period from 1968 to 18.11.2009, being the date of first representation moved by the applicant after 1968.

7. It is significant to state that the applicant had disclosed the grounds in the letter dated 4.12.1968 (Annexure R6) due to which he was not in a position to attend the Re-Survey Medical Board, relevant portion whereof is being reproduced as follows:

“On 28-11-1968, Mr.P.T.Varghese received a letter dated 19-11-1968 addressed to the Officer in Charge, Records, Signals Jabalpure, (M.P.) informing him about my Medical Re-Survey. Mr.P.T. Varghese informed me the details of the letter.

First of all, I would like to inform you that at present I am not staying with Mr.P.T.Varghese. But you are requested to send letters to the above address.

Further, I would like to inform you that I got a job in a Private company in Bombay. My present employer will not allow me to take even a single day's leave. After suffering a lot I got a very good chance in the present company and I am expecting better prospects. If I am taking leave and stay in a Hospital for a few days, I will loose my job and it is very difficult to get another job. With the pension of Rs.30/- per month it is difficult to pull on. I have attended two three interviews in Madras and I may leave for Madras within a short period. I am prepared to forgo the pension. I have not collected any pension after August this year.

You are requested to cancel my pension if you cannot give without Medical Resurvey. Only for Rs.30 if I am going for Medical Re-Survey, I will loose my job and I will be in the street.

Due to my ignorance I could not inform you earlier. Excuse me for the inconvenience cause.

You may please cancel my pension and I am expressing my inability to attend the Medical Resurvey."

Therefore, one of the grounds for not attending the Re-Survey Medical Board was that the applicant was well settled in another service with better future prospects, therefore, keeping in view the circumstances prevailing at that time, he decided not to press the pension. But it does not appear to be proper to reject his case for constituting a Re-Survey Medical Board again, especially when now a days he has become quite old and has no proper means of livelihood. We, therefore, consider it proper to take a reasonable and lenient view in the matter.

8. There does not appear to be any dispute that, after 1968 the applicant gave his representation for the first time on 19.11.2009 for revival of the pension, therefore, his claim for the period 1968 to

18.11.2009 has to be treated as the period for which he had not been interested for the disability pension/service element of disability pension and as such it is to be presumed that he had relinquished his rights to receive such pension during that period. In view of the fact that the applicant's disability, according to the learned counsel for the applicant, is still subsisting and he has become quite old and has no means of livelihood, it seems to be just and expedient to direct the respondents to hold again a Re-Survey Medical Board for assessing his present disability.

9. In view of the aforesaid, the Original Application is disposed of with the direction to the respondents to hold a Re-Survey Medical Board as expeditiously as possible preferably within three months from today and fix a date, time and place for the same and inform the applicant well in time requiring him to attend the Re-Survey Medical Board. In case the Re-Survey Medical Board finds that the applicant's disability is still continuing, at 20% or more, his claim for the disability pension with effect from 19.11.2009 may be given due consideration in accordance with law and appropriate orders may be passed expeditiously preferably within three months from the date of receiving the opinion of the Re-Survey Medical Board. However, it is made clear that if the disability is found less than 20% by the Re-Survey Medical Board, his case for the

service element of the disability pension with effect from the same date may be considered in terms of Regulation 188 of the Pension Regulations for the Army, 1961.

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

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

DK.

(True copy)

Prl. Private Secretary