

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A.No. 184 of 2016

TUESDAY, THE 24TH DAY OF JANUARY, 2017/4TH MAGHA, 1938

CORAM:

HON'BLE MR. JUSTICE S.S. SATHEESACHANDRAN, MEMBER (J)

HON'BLE VICE ADMIRAL M.P.MURALIDHARAN, AVSM & BAR, NM, MEMBER (A)

APPLICANTS:

VETERAN SUBEDAR (OPR) KESAVAN NAMBOODIRI. V.P.,
NO. JC 203569 'W',
PALAKKEEZHILLAM, KOROM. P.O., PAYYANUR,
KANNUR DISTRICT, KERALA – 670 307.

BY ADV.SHRI V.K.SATHYANATHAN

VERSUS

RESPONDENTS:

1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK,
NEW DELHI – 110 011.
2. THE CHIEF OF THE ARMY STAFF,
COAS'S SECRETARIAT,
INTEGRATED HEADQUARTERS MINISTRY OF DEFENCE (ARMY),
SOUTH BLOCK, DHQ P.O., NEW DELHI – 110 011.
3. THE OIC RECORDS,
ARTILLERY RECORDS,
NASIK ROAD CAMP, PIN – 908 802, C/O 56 A.P.O.
4. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS),
OFFICE OF THE PCDA (P), DRAUPADIGHAT,
ALLAHABAD, U.P - 211 014.

BY ADV. SHRI S.PRASANTH, CENTRAL GOVERNMENT COUNSEL

ORDER

Satheesachandran, Member (J):

The applicant, Subedar (Opr) Kesavan Namboodiri V.P., JC 203569 W of Indian Army, has filed the above O.A. under Section 14 of the Armed Forces Tribunal Act (for short 'the Act') for quashing Annexure A2 and to direct the respondents to grant him disability element of disability pension with rounding off benefits.

2. The applicant enrolled in the Indian Army on 2.3.1976 was discharged from service at his request on 1.3.1999. According to the applicant since 1995 he suffered from 'Essential Hypertension' and on the eve of his discharge the Release Medical Board had assessed his disability from the above disease at 20% opining that it was aggravated by military service. However, since he had applied for voluntary discharge, he was not granted disability pension for the disability suffered, but only service pension. Later, on knowing that even those who

voluntarily retired/released from service are eligible for grant of disability pension on the basis of subsequent Government orders issued, he submitted Annexure A1 representation requesting for grant of disability pension. However, his request was rejected under Annexure A2 holding that persons who were discharged at their own request are not entitled to disability element of pension. Impeaching Annexure A2 and seeking for quashing it, the applicant has sought for issue of directions to the respondents to grant him disability pension with rounding off benefits by filing this O.A.

3. Respondents filed a reply statement contending that individuals who seek discharge at their own request are not entitled to disability pension even if they are found to be suffering from disability attributable to or aggravated by military service. Applicant, who had obtained premature discharge from service, is not eligible for grant of disability pension, according to the respondents.

4. We heard learned counsel for the applicant, Shri.V.K.Sathyanathan and learned Central Government Counsel Shri.S. Prasanth, who appeared for the respondents.

5. Inviting our attention to Government of India Order MoD No. 16(5)/2008/D(Pen/Policy) dated 29.9.2009, learned counsel for the applicant contended that the interdiction prohibiting grant of disability pension to those who voluntarily retired from service even if they suffered from disability attributable to or aggravated by military service had been waived and removed w.e.f. 1.1.2006. Though the order initially provided relaxation only to those who retired/discharged on or after 1.1.2006, pursuant to orders passed by Courts/Tribunals its benefit has been extended to pre-2006 retirees as well. So much so, the applicant who was found having disability element of 20% from a disability aggravated by military service, as opined by the Release Medical Board, is eligible for grant of disability pension with rounding off benefits, submits the counsel. Annexure A3

proceedings of the Medical Board is relied upon by the counsel to sustain the claim of the applicant for the aforesaid relief canvassed for.

6. The Government of India order referred to by the counsel, no doubt, has relaxed the condition imposed earlier restricting the grant of disability pension to Armed Forces personnel who voluntarily retired from service if they were otherwise eligible for grant of disability pension for disability suffered due to military service. That order initially envisaged of granting such benefits only to those who were retired/discharged from service on or after 1.1.2006. But, later, it was modified extending the benefits to pre-2006 retirees as well. The applicant on the eve of his release was assessed of having 20% disability by the Release Medical Board opining that such disability from the invaliding disease of 'Essential Hypertension' was aggravated by military service, is the basis of the claim set up for grant of disability pension with rounding off benefits.

Perusing Annexure A3 we note that he was examined by the Release Medical Board on 5.11.1998 and his disability assessed at 20% was fixed for a period of two years from the above date. There has been no re-assessment of the disability of applicant. After expiry of two year period fixed under Annexure A3 whatever be the reasons the applicant had applied for grant of disability pension on the basis of Government Order referred to above under Annexure A1 only on 3.3.2012, and it was rejected under Annexure A2 holding that those who had been discharged at their own request are not entitled to disability element of pension.

7. Of course, rejection of the claim of applicant was not taking into account the subsequent Government Order modifying and relaxing the previous restriction imposed over the grant of disability element of disability pension in respect of a voluntarily retired personnel. That would not salvage the claim of the applicant for disability pension where it is seen no fresh

assessment had been made over his disability after the expiry of two year period fixed under Annexure A3 dated 5.11.1998. Applicant got voluntary discharge from military service after putting a total service of 23 years. He obtained voluntary discharge knowing fully well that whatever be the disability suffered due to military service he would not get any benefit of disability pension. Much later, a change of rule enabled similarly situated persons like him for getting disability pension. That alone would not confer on him the right to claim such benefit. He is shown to be now aged 59 years and on account of advancement of age the disability suffered and assessed by the Medical Board at the time of his release might have got aggravated. Over and above such disability, on account of advancement of age and due to other stress and strain of life he must be having other health problems as well. In view of so much span of time from the expiry of the two year period fixed over the assessment of his disability by the Release Medical Board, it is not advisable to convene a Re-assessment Medical

Board, which at best could only assess his present disability but not what, if any, was the percentage of disability after the two year period fixed by the Board. Belated claim of the applicant for disability pension canvassed solely on account of change of rule, where a fair and just assessment of the percentage of his disability for the disease after the period fixed by the Board is not possible, has only to be rejected.

8. In the result, the Original Application is dismissed.

9. There will be no order as to costs.

10. Issue free copy of this order to both sides.

Sd/-
VICE ADMIRAL M.P. MURALIDHARAN, JUSTICE S.S.SATHEESACHANDRAN,
MEMBER (A) MEMBER (J)

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/True Copy/

Prl. Private Secretary