

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI

O.A.NO. 187 of 2015

TUESDAY, THE 02ND DAY OF JANUARY, 2017/12TH POUSHA, 1938

CORAM:

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

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

APPLICANT:

VIJAYAKUMARAN PILLAI.K., AGED 52 YEARS,  
NO.1381200 H EX SPR,  
S/O KOCHU KRISHNA PILLAI,  
KOTTAPPURATHUKALLELIL HOUSE,  
MUTHUKULAM SOUTH P.O.,  
ALAPPUZHA DISTRICT, PIN – 690 506.

BY ADVS. SRI. B.HARISH KUMAR & SMT. SYLAJA

VERSUS

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE  
SECRETARY TO GOVERNMENT (DEFENCE),  
MINISTRY OF DEFENCE,  
NEW DELHI, PIN – 110 011.
2. THE SENIOR RECORDS OFFICER FOR OIC RECORDS,  
MADRAS ENGINEERING GROUP,  
C/O 56 APO, PIN – 900 493.
3. THE DIRECTOR GENERAL,  
CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS),  
ALLAHABAD, UTTARPRADESH – 211 014.

BY ADV. SRI. V.N.SUBHASH, CENTRAL GOVERNMENT COUNSEL

O R D E R

VAdm.M.P.Muralidharan, Member (A):

1. The Original Application has been filed by Vijayakumaran Pillai.K, No.1381200H, Ex Spr of the Madras Engineering Group seeking higher disability element of pension.

2. The applicant was enrolled in the Army (Madras Engineering Group) on 19 April 1984 and was invalided out of service with effect from 29 July 2000 under Army Rule 13(3)III(iii) on medical grounds for disabilities 'Neurotic Depression, Seizure Disorder and Recurrent Dislocation of both shoulders' after rendering 16 years 03 months and 11 days of service. The applicant was granted service pension and disability element of pension at 30% for 02 years.

3. The learned counsel for the applicant submitted that while working in Srinagar in 1987, the applicant sustained serious injuries on his shoulders and due to heavy dosage of medicines he contracted neurotic problems and suffered from Neurotic Depression and Seizure Disorder. The Medical Board at the time of his discharge from service held the applicant to have disabilities of 'Neurotic Depression, Seizure Disorder and Recurrent Dislocation of both shoulders' with composite disability of 60% for a period of 02 years (Annexure A2). However during adjudication of disability pension claim, the Medical Advisor reduced the percentage of disability from 60% to 30% and the applicant was granted disability element of pension from the date of his discharge at 30% for two years. Thereafter without intimation to the applicant the disability element was discontinued on the premise that he had not appeared for a Re-survey Medical Board. The learned counsel submitted that the applicant could not appear for a Re-survey Medical Board due to ill-health.

4. The applicant subsequently preferred an appeal for re-assessment of his disabilities through a fresh Medical Board and a Re-assessment Board was held in December 2011. The Medical Board proceedings received by the applicant post Re-assessment (Annexure A3), held the applicant to have disabilities at 20% each for Neurotic Depression and Seizure Disorder and at 30% for Recurrent Dislocation of both shoulders with composite disability of 30%. The learned counsel submitted that the applicant should have been granted 70% disability pension but has been granted only 30%. The learned counsel further submitted that the applicant was medically fully fit at the time of his enrolment and in accordance with the dictum laid down by the Hon'ble Apex Court in **Dharamvir Singh vs. Union of India and Others, (2013) 7 SCC 316**, all his subsequent disabilities should be presumed to have arisen due to conditions of service and therefore the applicant be granted disability at 70% for life from the date of his discharge.

5. The respondents in their reply statement have submitted that while the Invaliding Medical Board assessed the applicant to have three disabilities with composite disability assessed at 60% for two years. However two of the disabilities, Neurotic Depression and Seizure Disorder, were held as neither attributable to nor aggravated by military service and the third, Recurrent Dislocation of both shoulders was held as attributable to service and assessed at 30%. Accordingly post adjudication by PCDA (P), the applicant was granted disability element at 30% for two years (Annexure R2). The applicant subsequently appeared for a Re-survey Medical Board only in 2011, wherein it was once again held that even though disabilities of Neurotic Depression and Seizure Disorder were assessed at 20% each, they were due to non-service factors. Recurrent Dislocation of both shoulders was assessed at 30% and considered as attributable to service. The applicant was therefore granted 30% disability element of pension for life with effect from 09 January 2012. He was also held eligible

for disability element of pension for the intervening period from June 2002 to January 2012 and PPO was issued (Annexure R3). The respondents further submitted that the Hon'ble Apex Court in **Secretary, Ministry of Defence & Others vs. A.V.Damodaran (Dead) through LRs. & Others (2009) 9 SCC 140** had held that the Medical Board is an expert body and its opinion is to be given due weight, value and credence. The respondents further submitted that the applicant had been granted disability element of pension as per Entitlement Rules and was not eligible for any further benefits.

6. Heard rival submissions and perused records.

7. It is not disputed that the applicant was invalidated out of service under Army Rule 13(3)III(iii). The Invaliding Medical Board assessed him to have three disabilities, of which only the disability of Recurrent Dislocation of both shoulders was held as attributable to service for a period of

two years (Annexure A2). The applicant was accordingly granted disability element of pension (Annexure R2) in addition to his service pension. The applicant apparently accepted the disability element of pension granted to him and did not raise any issues on enhancement of disability element of pension at that stage. He also did not seek any re-assessment of his disability till 2011. It is observed that the Re-assessment Medical Board also assessed his disabilities of Neurotic Depression and Seizure Disorder as neither attributable to nor aggravated by service but assessed the disability of Recurrent Dislocation of shoulders at 30% for life including for the intervening period when the disability pension had been stopped due to delay in re-assessment. The applicant did not raise any appeal against the disability element of pension granted after Re-assessment. It is further observed from the PPOs issued (Annexures R2 and R3) that the applicant was also granted the benefit of rounding off of disability element of pension in accordance with Government of India letter

No. 1(2)/97/1/D(Pen-C) dated 31 January 2001. Therefore the applicant had been granted disability pension at 30% from the date of his invalidment with the benefit of rounding off to 50%.

8. The medical condition of the applicant as observed from the Re-assessment Medical Board, has been virtually static from the date of his discharge. Further, as observed earlier, the applicant did not raise any appeals on the element of disability pension granted to him at the time of his discharge from service. Nor did he have any issues on the same even after his Re-assessment Medical Board held nearly 12 years later. In case the applicant was of the view that he should have been granted a higher element of disability pension, he could have raised the issue, at least soon after conduct of his Re-assessment Medical Board. He did not do so. The applicant has also not placed before us anything new to indicate why the disability element of his pension should be enhanced.



9. In view of the foregoing, we do not find any merit in the claim of the applicant. The Original Application is accordingly dismissed.

10. There will be no order as to costs.

11. Issue free copy to the parties.

Sd/-

VICE ADMIRAL M.P. MURALIDHARAN,  
MEMBER (A)

sd/-

JUSTICE S.S.SATHEESACHANDRAN  
MEMBER (J)

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