

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI  
O.A.NO.50 OF 2012  
THURSDAY, THE 14TH DAY OF MARCH, 2013/23RD PHALGUNA, 1934  
CORAM:  
HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)  
HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

COL (RETD) P.PADMANABHAN (IC 39134P),  
AGED 57 YEARS,, S/O.LATE P.RAMAN,  
VILLAGE & P.O.KOROM, TEH PAYANNUR,  
DISTRICT KANNUR (KERALA),  
PIN 670 307.

BY ADV.SRI.T.R.JAGADEESH.

VERSUS

RESPONDENTS:

1. THE UNION OF INDIA,  
REPRESENTED BY ITS SECRETARY,  
MINISTRY OF DEFENCE ,  
SOUTH BLOCK, NEW DELHI – 11.
2. THE CHIEF OF ARMY STAFF,  
INTEGRATED HQRS. OF MINISTRY OF DEFENCE (ARMY),  
ADJUTANT GENERAL'S BRANCH  
ADD DIRECTORATE GENERAL (PS),  
DHQ P.O., NEW DELHI – 110 011.
3. ADJUTANT GENERAL'S BRANCH, (MP 5 & 6)  
INTEGRATED HQRS. OF MINISTRY OF DEFENCE (ARMY),  
WEST BLOCK III, R.K.PURAM,  
NEW DELHI – 110 066.
4. PCDA (PENSIONS), DRAUPADI GHAT,  
ALLAHABAD (UP) – 211 014.

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

O R D E R

Shrikant Tripathi, Member (J):

1. Heard Mr.T.R.Jagadeesh for the applicant and Mr.K.M.Jamaludheen for the respondents and perused the record.

2. The applicant Col (Retd) P.Padmanabhan has filed the instant Original Application to direct the 4<sup>th</sup> respondent to sanction and pay him disability pension with effect from the date of his discharge from the Army. He has further prayed for the benefit of rounding off of disability pension to the extent of 75% in terms of Para 7.2 of the Government of India, Ministry of Defence letter No. 1(2)/97/1/D(Pen-c) dated 31st January 2001.

3. The relevant facts are that the applicant was enrolled in the Indian Army on 8<sup>th</sup> February 1974 and in due course he rose upto the rank of Colonel and retired from the service on 30<sup>th</sup> November 2008 on attaining the age of superannuation. A Release Medical Board was constituted to

examine the applicant medically which found that the applicant had two disabilities, the first "Lumber Spondylosis with PIVD L4 L5" to the extent of 20% for life, which the Medical Board opined, had occurred due to stress and strain of military service. The other disability of the applicant was "Primary Hypertension" at the rate of 30% for life but the Medical Board was of the view that the Primary Hypertension was constitutional as the applicant had been posted in peace area, therefore, according to the Medical Board, the Primary Hypertension was neither attributable to nor aggravated by the military service. The applicant claimed disability pension. He was, however, sanctioned disability pension to the extent of 20% for the disability "Lumber Spondylosis with PIVD L4 L5, " but his claim for the disability pension with regard to Primary Hypertension was denied on the ground that the said disability was neither attributable to nor aggravated by the military service.

4. The first and second appeal preferred by the applicant were also dismissed vide letters No.13013/IC-

39134P/Arty/MP-6(B)/Appeal 15/2009)/AG/PS-4(Imp-II) dated 9<sup>th</sup> November 2009 (Annexure A6) and No.1(186)/2010/D(Pen/Appeal) dated 2<sup>nd</sup> December 2010 (Annexure A7) respectively.

5. Mr.T.R.Jagadeesh appearing for the applicant submitted that Re-categorization Medical Board had been held in 2007 which very clearly opined that the applicant's second disability (Primary Hypertension) had aggravated due to the military service. Therefore, the opinion of the Release Medical Board being contrary to the opinion of the Re-categorization Medical Board ought not have been given due weight by the respondents while considering his case for the disability with regard to Primary Hypertension. In this connection Mr.T.R.Jagadeesh next submitted that according to Annexure III to Appendix II of the Entitlement Rules for Casualty Pensionary Award, 1982, Primary Hypertension normally arises as a result of stress and strain of the military service. He next submitted that neither the PCDA (P) nor both the appellate authorities gave any due

consideration to the provisions contained in the aforesaid Annexure III, therefore, on this ground too the decision taken by the respondents stood vitiated.

6. Mr.K.M.Jamaludheen, on the other hand, submitted that the opinion of the Medical Board was final and conclusive, therefore, the applicant's claim for the disability pension with regard to the disability "Primary Hypertension" has no substance. He next submitted that if there was a conflict of opinion between the Re-categorization Medical Board and Release Medical Board, the opinion of the Release Medical Board would prevail.

7. We do not consider it proper to express any opinion with regard to the question as to which of the two Medical Board's opinion would prevail. But, as a matter of fact, when the appeal was brought before the first appellate authority, he should have noticed this discrepancy while deciding the appeal and should have constituted an Appeal Medical Board to find out the correct opinion, especially when Annexure III of Appendix II of the Entitlement Rules

for Casualty Pensionary Award, 1982, provides that the "Primary Hypertension" normally arises as a result of stress and strain of the military service. But none of the appellate authorities gave any due consideration to the said provision of the Entitlement Rules or to the aforesaid discrepancies in the medical opinion.

8. In view of the aforesaid, we have no option except to remit the matter to the first appellate authority to reconsider the applicant's claim for disability pension with regard to Primary Hypertension disability and take appropriate decision in accordance with law.

9. The Original Application is allowed. The orders of the first and second appellate authority are quashed. Consequently, the matter is remitted to the first appellate authority to reconsider the applicant's claim for disability pension with regard to "Primary Hypertension", in the light of the observations made herein before and take appropriate decision as expeditiously as possible, preferably within four months from today. In view of the

aforesaid discrepancies appearing in the opinion of the Release Medical Board and Re-categorization Medical Board, the first appellate authority to constitute an Appeal Medical Board for assessing the applicant's disability before disposing of the appeal. The first appellate authority is further expected to give due consideration also to the aforesaid provisions contained in Annexure III to Appendix II of the Entitlement Rules for Casualty Pensionary Award, 1982.

10. So far as the question of rounding off is concerned, the same may also be given due consideration according to the Government of India, Ministry of Defence letter No. 1(2)/97/1/D(Pen-c) dated 31st January 2001.

11. There will be no order as to costs.

12. Issue copy of the order to both side.

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

Sd/-  
JUSTICE SHRIKANT TRIPATHI  
MEMBER (J)

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(true copy)