

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI

T.A.NO. 85 OF 2010
(WP(C) 13170/2009 OF THE HIGH COURT OF KERALA, ERNAKULAM)
TUESDAY, THE 5TH DAY OF MARCH, 2013/14TH PHALGUNA, 1934

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)
HON'BLE LT.GE.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

SMT.SHYNI SASIDHARAN NAIR, WIFE AND
NEXT OF KIN OF SERVICE NO.171507 R,
L/S RP2 SASIDHARAN NAIR.C. OF INDIAN NAVY,
NOW RESIDING AT GEETHA NIVAS,
KATTITHARA ROAD, NEAR AYANI SHIVA TEMPLE,
MARADU.P.O., ERNAKULAM DISTRICT, PIN 682 304.

BY ADV.SRI.C.R.RAMESH.

VERSUS

RESPONDENTS:

1. THE UNION OF INDIA,
REPRESENTED BY ITS DEFENCE SECRETARY,
SOUTH BLOCK, DEFENCE HEADQUARTERS,
NEW DELHI – 110 011.
2. INDIAN NAVY REPRESENTED BY
THE CHIEF OF THE NAVAL STAFF,
NAVAL HEADQUARTERS,
SOUTH BLOCK, NEW DELHI – 110 001.
3. THE CHIEF CONTROLLER OF DEFENCE ACCOUNTS
(PENSIONS), THE OFFICE OF THE CCDA (P),
ALLAHABAD, U.P. STATE.

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

O R D E R

Shrikant Tripathi, Member (J):

1. Heard Mr.C.R.Ramesh for the applicant and Mr.K.M.Jamaludheen for the respondents and perused the record.

2. The applicant Smt.Shyni Sasidharan Nair, the wife as also guardian of Ex Sailor Sasidharan Nair.C, No.171507R has filed Writ Petition No.13170 of 2009 in the Hon'ble High Court of Kerala for a writ of mandamus directing the respondents to reinstate her husband in service with all consequential benefits. An additional prayer to direct the respondents to constitute a Medical Board for assessing the actual disease/disability of her husband and the percentage thereof was also made in the Writ Petition. On the establishment of the Armed Forces Tribunal, the aforesaid writ petition was transferred to the Tribunal under Section 34 of the Armed Forces Tribunal Act and has been registered here as T.A.No.85 of 2010.

3. It is alleged that the applicant's husband is mentally sick, therefore, the Writ Petition/Transferred Application was filed by his wife on his behalf.

4. The applicant's husband was recruited in the Indian Navy on 7th September 1988 and was invalided out of service on 30th August, 1996. The Invaliding Medical Board found him suffering from the disability "Neurosis (relapsed) – International Code No. 300 V-67". A copy of the discharge certificate being relevant on the point has been filed as Ext.P1. The Medical Board found the disability less than 20% (15%-19%). More so, it further opined that the disability was neither attributable to nor aggravated by the service, therefore, the claim of the applicant's husband for disability pension was denied.

5. We failed to understand as to how the applicant questioned the discharge of her husband which was made on medical ground. When the applicant's husband had sustained a disability and the Medical Board recommended

his ouster from the service on the ground of the disability, the discharge order could not be challenged on the ground that discharge was not proper.

6. Mr.C.R.Ramesh appearing for the applicant very frankly conceded that the applicant would press the present Transferred Application only for disability pension and the relief of quashing the discharge order was accordingly not pressed.

7. Mr.C.R.Ramesh further submitted that the applicant's husband had been deployed in war ship of the Navy during the period of the onset of the disability, therefore, the disability had aggravated due to the military service. In this regard the applicant has made relevant averments in paragraph 10(H) and (I) of the writ petition which may be re-produced as follows:

" (H) However, the petitioner's husband's agony started when he was just 18-19 years old, in 1989, when his aforementioned war-ship, INS Mahe, was deployed for the combat operations against LTTE as

part of the IPKF operations in Sri Lanka. From 1989 to 1994, he was actively participating in these operations, while in service. Besides, during this period, he was assigned duties and was deployed in various combat vessels of Indian Navy, such as, INS Ratnagiri, INS Abhay, INS Agnibahu, etc. involved in these terrible operations, vide Exhibit-P3.

(I) In the said combat operations, the above ships have been then fighting against the deadly 'Sea Tigers' of LTTE and the guerrilla warfare of the Sea Tigers, including horrifying suicide attacks, were quite new, terrifying and different from the conventional warfare that was hitherto taught or trained for the sailors in the Indian Navy. During this period, the petitioner's husband had to involve and frequently witness such a terrible warfare by the Sea Tigers, where even his life was also facing immense threat. Even his death was endangered in the mid-sea because of the frequent and gruesome attacks by the Sea Tigers of LTTE."

8. Mr.Ramesh next submitted that the disability of the applicant's husband has after the discharge, increased to more than 20% as his condition has deteriorated, therefore, a direction be issued to the respondents to hold

a Re-assessment Medical Board for re-assessing the disability.

9. Mr.K.M.Jamaludheen, on the other hand, submitted that the disability of the applicant's husband was less than 20%, therefore, he was not entitled to disability pension. It was further submitted that in view of the fact that the applicant had only 8 years of service, he was not entitled to even invalid pension.

10. Mr.K.M.Jamaludheen next submitted that the applicant's posting had been at peace stations and as such the conditions of service were not instrumental to cause the disability. Therefore, according to the respondents, the Medical Board's opinion that the disability was neither attributable to nor aggravated by the service, was correct.

11. No copy of the opinion of the Invaliding Medical Board is on record. Neither the applicant nor the respondents filed the same. Therefore, we are not in a position to decide as to whether the conditions of service of

the applicant's husband were instrumental in causing the disability or not. In view of the fact that the contention on behalf of the applicant is that the disability of the applicant's husband has aggravated after the discharge, it seems to be just and expedient to direct the respondents to hold a Re-assessment Medical Board for assessing the disability, its percentage and attributability.

12. We have already examined the relevancy of the opinion of the Medical Board and other relevant factors for sanctioning the disability pension, in O.A.No.130 of 2010 (**Nandakumar.J. v. Union of India & Ors**) decided on 17th January, 2013. In that case, the decisions rendered by the Apex Court in the following cases were thoroughly examined:

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).

13. Accordingly, the following principles were laid down:

- (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.

14. The applicant's husband's case needs to be examined in the light of the aforesaid principles. In view of the fact that we have no opinion of the Medical Board and other relevant records, we are not in a position to decide as to whether the conditions of service of the applicant's husband were instrumental in causing the disability or not.

15. In view of the aforesaid, we have no option except to remand the matter to the respondents for reconsideration as per the observations made hereinbefore.

16. The Transferred Application is disposed of with the direction to the respondents to constitute a Re-survey Medical Board to assess the continuance of the applicant's disability as expeditiously as possible, preferably within four months from today and fix a date, time and place for the same and inform the applicant well in advance requiring him to attend the Re-assessment Medical Board. In case the Re-survey Medical Board finds the disability still continuing

and is 20% or more and is attributable to or aggravated by the Military service, the applicant's husband's claim for the disability pension may be given due consideration in accordance with law.

17. There will be no order as to costs.

18. Issue copy of the order to both side.

Sd/-

LT.GEN.THOMAS MATHEW
MEMBER (A)

Sd/-

JUSTICE SHRIKANT TRIPATHI
MEMBER (J)

(true copy)

an

Prl.Pvt.Secretry