

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI

O.A.NO.156 of 2014

MONDAY, THE 23RD DAY OF NOVEMBER, 2015/02ND AGRAHAYANA, 1937

CORAM:

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

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

APPLICANT:

BHASKARAN.T.N.,  
SERVICE NO 180047N, EX ERA-3,  
AGED 63 YEARS, S/O.K.CHANDUKUTTY,  
REMYA NIVAS, ATHANIKKAL EAST,  
P.O.WEST HILL, KOZHIKODE - 673 005.

BY ADV.SRI.A.VISWANATHAN.

Versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS  
SECRETARY, MINISTRY OF DEFENCE,  
NEW DELHI - 110 011.
2. PRINCIPAL DIRECTOR OF PAY & ALLOWANCES,  
INTEGRATED HEADQUARTERS,  
MINISTRY OF DEFENCE (NAVY),  
ROOM NO.120, D-II WING, SENA BHAVAN,  
NEW DELHI - 110 105.
3. THE COMMODORE, BUREAU OF SAILORS,  
MANKHURD, MUMBAI - 400 088.
4. ACCOUNTS OFFICER (P), PCDA (PENSIONS),  
G3 SECTION, ALLAHABAD - 211 001.

BY ADV.SHRI P.J.PHILIP, CENTRAL GOVT. COUNSEL.

O R D E R

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

1. The applicant, Bhaskaran. T.N., No.180047N, Ex-ERA-3 was enrolled in the Indian Navy on 20 October 1970 as a direct entry Artificer and was discharged on medical grounds on 21 January 1977 in the rank of ERA-3. At the time of discharge as his invaliding diseases were considered as neither attributable to nor aggravated by Naval service, his claim for disability pension was rejected. Subsequently the applicant was sanctioned disability pension with composite disability of 60% rounded off to 75% for life, with effect from 17 October 2011 based on decision of the First Appellate Authority.

2. The applicant had earlier filed O.A.No.16 of 2014 seeking disability pension from 21 February 1977 to 16 October 2011, ie, intervening period between discharge

and date of sanctioning of disability pension. That Original Application was disposed of on 13 June 2014 with a direction to the Respondents to take appropriate decision regarding the applicant's claim for disability pension within a period of four months. The respondents vide letter No.PN/0134/DP/651/10 dated 19 September 2014 (Annexure A10) rejected the claim of the applicant for grant of disability pension for the intervening period from February 1977 to October 2011. Hence this appeal.

3. Sri.A.Viswanathan, learned counsel for the applicant submitted that while the claim of the applicant for disability pension was initially rejected, the First Appellate Committee had granted him disability pension considering one of his disabilities, ie, 'chronic colitis' as aggravated by Naval service and the other disability 'Neurosis' as attributable to service. The applicant was accordingly sanctioned disability pension for a composite disability of 60% rounded off to 75%,

with effect from 17 October 2011, ie, date of the Appeal Medical Board (AMB), (Annexure A2).

4. The learned counsel further submitted that the applicant then preferred a second appeal in May 2012, essentially seeking pension with effect from 20 February 1977 instead of 17 October 2011 (Annexure A5). Later, on receipt of PPO based on his first appeal (Annexure A3), observing anomalies, the applicant sought correction of his rank in the PPO and enhancement of pension to match that of his rank (Annexure A7). As he did not get any response from the Respondents on both the issues, the applicant filed O.A.No.16 of 2014 in this Tribunal, which was disposed of directing the respondents to take appropriate decision on the claims of the applicant within a period of four months (Annexure A9). The Respondents rejected the applicant's appeal for grant of disability pension for the intervening period from 21 February 1977 to 16

October 2011 (Annexure A10) stating that since the first appeal had been made after a lapse of 33 years, the disability pension had been granted only from the date of the Appeal Medical Board and cannot be granted from date of discharge.

5. The learned counsel also submitted that the respondents had not referred to the order passed by this Tribunal in O.A.No.16 of 2014 while rejecting applicant's claim vide Annexure A10. Further, while considering the belated first appeal, the respondents had sought reasons from the applicant for the delay (Annexure A11) to which he had responded (Annexure A12) giving reasons. The respondents had thereafter considered the time barred appeal and granted him disability pension. The learned counsel contended that while at the time of discharge, disability pension was not sanctioned only as the disabilities were not considered attributable to or aggravated by service, once the First Appellate

Committee found them to be aggravated/attributable and had granted disability pension, there was no justification to deny the same from the date of discharge. He further submitted that no action had been taken on revising the rank and pension of the applicant in the earlier O.A. He therefore prayed that the applicant be granted disability pension with effect from date of discharge, ie, 21 January 1977, and pension amount be enhanced to the rank of ERA-3.

6. Sri P.J.Philip, learned Central Government Counsel for the respondents submitted that prior to discharge of the applicant from the Navy on 21 January 1977, he had been brought before an Invaliding Medical Board which had considered his diseases 'chronic colitis' and 'Neurosis' as neither attributable to nor aggravated by Naval service and therefore his claim for disability pension was rejected by Respondent No.4 (PCDA (P)) in August 1977 (Annexure R1). The applicant had also

been advised vide Annexure R1, to prefer an appeal within six months of the decision, if he so desired. The applicant however made a belated first appeal after nearly 33 years, in May 2010. The respondents after condoning the delay had called the applicant for an Appeal Medical Board, based on which the First Appellate Committee had sanctioned disability pension at 60% for life, rounded off to 75% and pension was granted with effect from 17 October 2011, ie, date of the Appeal Medical Board. The applicant made a second appeal in May 2012 for grant of disability from his date of discharge (Annexure A5). While that appeal was under consideration, PPO was issued granting him disability pension with effect from 17 October 2011 for life (Annexure R3). As the PPO had erroneously indicated rank of applicant as ERA instead of ERA-3, a request for correction was received from him and the applicant also filed OA.No.16 of 2014. The learned counsel further submitted that a corrigendum to the PPO (Annexure R4)

has been issued indicating correct rank and enhancing the amount of pension of the applicant.

7. The learned counsel also submitted that even prior to ruling of the Tribunal in O.A.No.16 of 2014, based on the second appeal by the applicant, grant of disability pension from his date of discharge was under consideration of respondents. The appeal was rejected as the applicant made his first appeal after a lapse of 33 years and no cogent reasons had been given for a belated appeal (Annexure R5/A10). Subsequently, based on the directives of this Tribunal in O.A.No.16 of 2014 Respondent No.3 had taken up a case with Respondents 2 and 4 (Annexures R6 and R7 respectively), for grant of disability pension for the interim period and decision is awaited in this regard.

8. Heard rival submissions and perused records.



9. It is not disputed that based on the AMB conducted in October 2011, the First Appellate Committee granted disability pension at 60% for life rounded off to 75% to the applicant with effect from 17 October 2011. As observed from Annexure R4, a corrigendum PPO has been issued correcting the rank held by the applicant at the time of his discharge from the Navy to ERA-3 and enhancing the disability element in accordance with the rank. Therefore the only issue that remains for our consideration is the eligibility of the applicant for disability pension in the interim period between his discharge and date of actual granting of the disability based on Appeal Medical Board.

10. At the outset we would like to bring out that the applicant as well as Respondent No.3 have incorrectly interpreted/quoted the decision by this Tribunal in O.A.No.16 of 2014 (Annexure A9). The directive portion of the O.A being relevant is re-produced

below:

“7. The Original Application is disposed of with the direction to the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents to take appropriate decision regarding the applicant's claim for the disability pension from 21<sup>st</sup> February 1977 to 16<sup>th</sup> October 2011 within a period of four months from the date of receipt of a copy of this order and communicate the decision to the applicant.”

11. As can be observed, this Tribunal has not passed any order on the merits of the claim of the applicant for disability pension for the interim period and has only directed the respondents to take appropriate decision regarding applicant's claim within a period of four months. Therefore the statements of the respondents in Annexures R6 and R7 that this Tribunal has granted disability pension to the applicant for interim period is incorrect.

12. It is observed that the applicant preferred his first appeal after 33 years. The respondents condoned

the delay and conducted a fresh Medical Board, based on which the applicant was granted disability pension from the date of the Board. In our view, normally a belated service related claim is liable to be rejected on grounds of delay and laches. However based on the principles enunciated by the Hon'ble Apex Court in **Union of India vs. Tarsem Singh, 2008 (8) SCC 648**, one of the exceptions to the said rule are cases relating to continuing wrong such as re-fixation of pay or pension which may be granted in spite of delay. However the Apex Court also held that as regards arrears, Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

13. In our view, based on the above principles, while claim of disability pension would classify as a continuing wrong, in view of inordinate delay on the part of the applicant in preferring an appeal, the respondents

were perfectly justified in restricting his claim to commence from the date of Appeal Medical Board.

14. In view of the above, we do not find any merit in the claim of the applicant and the Original Application is accordingly dismissed.

15. There will be no order as to costs.

16. Issue free copy to the parties.

Sd/-

sd/-

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

JUSTICE S.S.SATHEESACHANDRAN  
MEMBER (J)

(true copy)

an

Prl.Pvt.Secretary