

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A. NO. 42 OF 2017

FRIDAY, THE 03RD DAY OF NOVEMBER, 2017/12TH KARTHIKA, 1939

CORAM:

HON'BLE MR. JUSTICE BABU MATHEW P. JOSEPH, MEMBER (J)

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

EX NK. THOMACHAN V.J, AGED 48 YEARS
(NO. 14589591-X), S/O SHRI V.T.JOSEPH,
VADAKKAL HOUSE,
PARIYARAM P.O,
THRISSUR DISTRICT,
KERALA – 680721.

..... APPLICANT

BY ADV. SRI. VARGHESE P. CHACKO

versus

1. UNION OF INDIA, REPRESENTED BY
THE SECRETARY, MINISTRY OF DEFENCE,
NEW DELHI, PIN – 110 011.
2. CHIEF OF THE ARMY STAFF,
ARMY HEAD QUARTERS,
NEW DELHI, PIN – 110 011.

..... RESPONDENTS

3. OFFICER-IN-CHARGE, EME RECORDS,
PIN 900 453, C/O 56 APO.
4. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNT (PENSIONS)
DRAUPADIGHAT, ALLAHABAD – 211 014.

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

ORDER

VAdm M.P.MURALIDHARAN, MEMBER (A)

1. The Original Application has been filed by Thomachan VJ., Ex Naik, No. 14589591X, seeking disability pension with the benefit of rounding off.

2. This is the second round of litigation by the applicant on the same issue, as he had earlier filed Original Application No. 53 of 2011 before this Tribunal. That Original Application was disposed of by Order dated 07 June 2013, directing the respondents to take appropriate decisions on the applicant's claim for disability pension within a period of three months (Annexure A10). In compliance of orders of this Tribunal, a speaking order was passed by the respondents, by which the claim of the applicant for grant of disability pension was considered and rejected (Annexure A11) and hence, this Original Application.

3. The applicant was enrolled in the Army on 20 November 1985 and was discharged from service on 30 November 2002 under Army Rule 13(3)III(iv) at his own request on compassionate grounds, after rendering a service of 17 years and 11 days (Annexure A4).

4. Sri. Varghese P.Chacko., the learned counsel for the applicant, submitted that the applicant had to seek discharge from the Army on extreme compassionate grounds to look after his family, as his father had gone missing and remained untraced. The Release Medical Board held at the time of his discharge, assessed the applicant to have the disability of Traumatic Synovitis Right Knee - 724(b), which was assessed at 20% for two years (Annexure A3). The applicant, who was not granted any disability pension, appealed to EME Records (Respondent No.3) for grant of the same (Annexure A5). Since there was no response to the request, he preferred another appeal through the Zilla Sainik Welfare Officer, for grant of

disability pension (Annexures A6, A7). The applicant's claim for disability pension, was rejected by the respondents stating that personnel, who had been discharged from service on compassionate grounds, were not entitled to disability pension (Annexure A8). The applicant, therefore, filed O.A. No.53 of 2011 before this Tribunal, which was disposed of directing the respondents to take appropriate decision in the applicant's claim for disability pension within a period of three months from the date of receipt of copy of the order (Annexure A10).

5. The learned counsel further submitted that the respondents, thereafter considered and rejected the claim, by a speaking order stating that in case of pre - January 2006 premature retirees, disability element was granted only on case to case basis in compliance of judicial orders and a specific policy in this regard was under examination of the Government (Annexure A11). The learned counsel submitted that the stand of the respondents was not in

keeping with the decision of the Honourable Delhi High Court in **Mahavir Singh Narwal vs. Union of India and Others, (2004) 74 DRJ 661**, wherein the respondents had been directed to grant disability pension even to a person who had sought voluntary discharge. The learned counsel therefore prayed that the applicant, who was similarly placed, be granted disability element of pension.

6. The respondents in their reply statement submitted that the applicant, who was enrolled in the Army on 20 November 1985, was discharged from service on 30 November 2002 at his own request on extreme compassionate grounds prior to fulfilling his conditions of his enrolment, under Army Rule 13(3)III(iv). The respondents further submitted that the Release Medical Board held prior to discharge of the applicant had assessed him to have the disability of Traumatic Synovitis Right Knee – 724(b), which was held as attributable to and aggravated by service and assessed at 20% for a period of

two years (Annexure R1). The applicant was granted service pension for life and other benefits such as DCRG, commutation of pension and Army Group Insurance Maturity Benefits. Eventhough the applicant's disability was considered as attributable to and aggravated by military service, the applicant was not eligible for grant of disability pension in accordance with Regulation 173 of the Pension Regulations for the Army 1961, as he was not invalided out of service, but had been discharged at his own request (Annexure R2). The respondents further submitted that the applicant was also not eligible for disability pension in accordance with the revised policy of Government, post V CPC, as he had been discharged at his own request (Annexure R3).

7. In compliance of orders of this Tribunal in O.A.No.53 of 2011, the competent authority directed that the applicant be called upon to avail of his statutory remedy of appeals (Annexure R4). Accordingly, the EME

Records (Respondent No.3) directed the applicant to prefer an appeal. However, the first appeal received from the applicant was found incomplete, as the necessary undertaking certificates were missing and he was advised to resubmit the same along with necessary certificates. Simultaneously, the case of the applicant was once again taken up with the competent authority for necessary sanction for grant of disability pension, in view of the orders of this Tribunal. The competent authority on consideration, issued a speaking order rejecting the claim of the applicant (Annexure R5). The respondents further submitted that since the applicant's claim for disability pension was rejected, he was required to prefer statutory appeals before the competent authority. However, without doing so, the applicant had approached this Tribunal once again for grant of disability pension.

8. Heard rival submissions and perused records.

9. It is not disputed that the applicant was discharged from service in accordance with Army Rule 13(3)III(iv) prior to fulfilling the conditions of his enrolment, at his own request on compassionate grounds. The Release Medical Board held prior to the discharge of the applicant, assessed him to have the disability of Traumatic Synovitis Right Knee – 724(b), which was held as attributable to and aggravated by military service and assessed at 20% for a period of two years (Annexure R1). Therefore, in accordance with Pension Regulations and Entitlement Rules for Casualty Pensionary Awards, the applicant would have been eligible for grant of disability element of pension for a period of two years, had he been discharged on completion of his term of engagement or had he been invalided out of service. In the instant case, the respondents have contended that the applicant was not eligible for grant of disability element of pension in accordance with the then prevalent Rules and Regulations, as he had been discharged at his own request. They have

further contended that the applicant was ineligible for pension in the absence of government policy and judicial orders (Annexure R5).

10. The Honourable Delhi High Court in **Mahavir Singh Narwal vs. Union of India and Others, (2004) 74 DRJ 661**, had examined the aspect of eligibility of personnel who sought discharge on compassionate grounds for grant of disability pension. It was held that even personnel who were discharged on compassionate grounds, were eligible for disability element of pension, provided the disability was attributable to or aggravated by military service. The Special Leave Petition, SLP(C) No.024171 of 2004, filed against the said judgment was dismissed by the Honourable Supreme Court by order dated 04 January 2008. Therefore, in our view, the applicant was also eligible for grant of disability element of pension at the time of his discharge, albeit for a period of two years.

11. It is also observed that a revised policy was promulgated by the respondents in September 2009 wherein personnel who retired on or after 01 January 2006 were eligible for grant of disability element of pension even if their discharge was at their own request. The policy has been incorporated as Regulation 83, in the revised Pension Regulations for the Army, 2008. The respondents have contended that the applicant being a pre-2006 retiree, cannot claim such a benefit in the absence of judicial orders or revised Government policy. The aspect of enhanced benefits announced by the Government becoming available to personnel who had retired before the date of promulgation was considered by the Honourable Apex Court in **KJS Buttar vs. Union of India & Another, (2011) 11 SCC 429**. It was held that when the policy was only a liberalisation of an existing Scheme and not a new retiral benefit, even those who had retired earlier would be eligible for such benefits from the date of its promulgation. In keeping with the said principles, this

Tribunal in **O.A.No.125 of 2015, Major Ramakrishnan A.K. (Retd.,) vs. Union of India and Others**, had granted disability pension to the applicant therein based on the revised policy of September 2009. Therefore, in our view, even based on the revised policy, the applicant would be eligible for grant of disability element of pension for his disability Traumatic Synovitis Right Knee – 724(b), which was assessed at 20%, provided the disability existed on or after 01 January 2006.

12. Eventhough we have observed that the applicant was eligible for grant of disability pension at the time of his discharge, it is also observed that the disability was assessed only for a period of two years and no medical records have been placed before us to indicate whether the disability still persists and if so at what percentage. Therefore, a Reassessment Medical Board would be necessary to examine the same.

13. In view of the foregoing, the Original Application is disposed of directing the respondents to conduct a Reassessment Medical Board of the applicant within a period of three months from the date of receipt of a copy of this order, to assess if the disability of the applicant Traumatic Synovitis Right Knee – 724(b), observed at the time of his discharge from the Army, still persists and at what percentage. If on Reassessment, this disability still persists and is assessed at or more than 20%, the applicant would be eligible for grant of disability element of pension. The applicant would also be eligible for the benefit of rounding off of the disability element in accordance with the principles laid down by the Honourable Apex Court in **Union of India vs. Ram Avtar, Civil Appeal No.418 of 2012** and connected cases. If found eligible, the respondents are directed to sanction and issue necessary PPO for grant of disability element of pension to the applicant within a further period of three months from the date of Reassessment Medical Board. It

is however made clear that arrears of disability element, if so granted, would only be from the date of the Reassessment Medical Board in accordance with order dated 31 July 2017 in M.A. No. 135 of 2017 while condoning the inordinate delay in filing of the Original Application.

14. There will be no order as to costs.

15. Issue free copy to the parties.

Sd/-
VICE ADMIRAL M.P. MURALIDHARAN,
MEMBER (A)

Sd/-
JUSTICE BABU MATHEW P. JOSEPH
MEMBER (J)

(true copy)

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