

FORM NO – 21
(See Rule 102 (1))

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION NO: O.A. 52 OF 2012

THURSDAY, THIS ELEVENTH DAY OF APRIL, 2013

CORAM : **Hon’ble Mr. Justice Raghunath Ray, Member (Judicial)**
 Hon’ble Lt. Gen. K.P.D.Samanta, Member (Administrative)

Army No. 13877879 Ex HAV Sambhu Nath Singh, ASC
Records (South), Bangalore-560007, son of Late Vikrama
Singh, resident of village Ratanpura Basant, PO Basant, PS
Autarnagar, Dist. Saran (Bihar) PIN 841202
5089 Composite Compo.

..... Applicant

Versus –

1. Union of India through the
Defence Secretary,
Ministry of Defence, Defence HQ, New Delhi.
2. The Chief of the Army Staff, Army HQ,
Defence HQ, New Delhi.
3. The Senior Record Officer,
ASC Records (South) Bangalore-560007
4. The Officer-in-Charge, PCDA (P) Allahabad (UP)
5. The Officer-In-Charge, AGPS (4d),
Army Headquarters, New Delhi.

.....Respondents

For the applicant : Mr. Fulman Singh, Advocate

For the respondents : Mr. S.K.Bhattacharyya, Advocate

O R D E R

Per Hon’ble Lt. Gen. K. P. D. Samanta, Member (A) :

In this O.A. filed under section 14 of the Armed Forces Tribunal Act, 2007, the applicant has mainly prayed for grant of disability pension in his favour.

2. The applicant was enrolled in the Army Service Corps (ASC) on 05.02.1980 and he retired from service on 28.02.2006 after completing his full service of 26 years in accordance with his terms and conditions. During his service he was placed in low medical category P3 (later upgraded to P2) since 21 June 2004 for suffering from the disease of *PRIMARY HYPOTHYROIDISM*. At the time of superannuation, he was put through a release medical board wherein his medical category was stated to remain in P2. The *ibid* medical board, however, did not hold the said disability to be either attributable or aggravated due to military service but considered the disability percentage to be 30% for life. Accordingly, he did not receive any disability pension.

3. It is the case of the applicant that when he entered the army service he was physically and mentally fit. There was no disability as such. However, during the course of his employment and military service, he had to serve in various places with different and harsh climatic conditions. It was possible that the disease might have developed due to such service condition. Therefore, his disability should be treated to be attributable to military service and he should be granted disability pension to the extent it is admissible as per rules. The Release Medical Board found his disability to the extent of 30%. After his discharge from service the applicant was granted his normal service pension but he was denied disability pension, although he was in low medical category since 2004. The applicant's claim for such disability pension was rejected by the PCDA (P). Being aggrieved thereby, the applicant preferred an appeal before the appropriate authorities against such non-grant of disability pension, but the said appeal was rejected. Subsequently, he preferred a 2nd appeal but the same was not considered and is still stated to be pending. In such circumstances, the applicant has been compelled to file this O.A. seeking a direction

to the respondent authorities to grant him disability pension with effect from 01.03.2006 i.e. date of his discharge.

4. The respondents have contested the application. It is stated by the respondents that the applicant was initially appointed on 05.02.1980 and he was discharged on 28.02.2006 after putting in 26 years of service and having completed his normal terms and conditions of service. Since he was in low medical category, he was put through a Release Medical Board at the time of discharge as per rules. He was first placed in low medical category (P3) with effect from 21.06.2004 and later upgraded to P2 on 31 Dec 2004 by a Medical Board held at Command Hospital, Northern Command for the ibid disease. He was discharged from service on completion of terms of engagement under Rule 13(3)(III)(i) of the Army Rules. He was granted his normal service pension and other retirement benefits as admissible under the rules. It is stated that the Release Medical Board that examined the applicant at the time of discharge, clearly held that the disease with which the applicant was suffering was not attributable to nor aggravated by military service. Therefore, the applicant is not entitled to any disability pension in terms of Regulation 173 of Pension Regulations for Army 1961 (Revised). The respondents have relied on some decisions of the Hon'ble Supreme Court to contend that opinion of the Medical Board should be given due importance and cannot be interfered with by Court or Tribunal.

5. The applicant has filed a rejoinder to the counter affidavit filed by the respondents in which he has referred to certain decisions of the Hon'ble Supreme Court as also of Hon'ble High Courts to contend that even if the disease may not be directly attributable to military service, one is entitled to disability pension if the disease has some casual connection with the conditions of service.

6. We have heard Mr. Fulman Singh, Id. advocate for the applicant and Mr. Sandip Kumar Bhattacharyya, Id. advocate for the respondents. Mr. Bhattacharyya

has produced the original Medical Board Proceedings which have been inspected by Mr. Singh with our permission.

7. Mr. Singh, while making his oral submissions, emphasized on the issue of the applicant's service profile in harsh climatic conditions. He submitted that when the applicant entered into the service, he was hail and hearty and there was no indication of any disease. It was during the course of military service that he was posted in very many difficult places with harsh climatic conditions including tenure in Doda district of Kashmir, where he was exposed to snow and extreme cold climate. It is quite likely that such disease could have developed there or on account of service in such areas. Therefore, Mr Singh, the Id. Counsel for the applicant, argues that there is every likelihood of the said disability having a casual connection with the conditions of service. He has referred to a decision of the Hon'ble Patna High Court in the case of **Mahesh Prasad Mondal vs. Union of India** reported in 2000(1) PLJR 1060. In that case, reference has been made to the following decisions :-

- (1) **Joginder Sing vs. Union of India**, reported in 1995 Supp (3) SCC 232,
- (2) **Piar Chand vs. Union of India**, Himachal Pradesh High Court reported in 1996 LAB.I.C. 445 and
- (3) **Baljor Sing vs. Union of India**, Delhi High Court reported in 1997 LAB.I.C. 1818

8. Mr. Fulman Singh has particularly referred to the decision of the Hon'ble Himachal Pradesh High Court in **Piar Chand vs. Union of India** case (supra) and has submitted that in that case also the petitioner was suffering from *Epilepsy* and it was observed that the said disease arose during the service and not existed before the petitioner joined the service and, therefore, the Hon'ble High Court held that there was a casual connection with his service condition and hence the petitioner was entitled to disability pension. Taking cue from this decision Mr. Singh contended that

in the present case also the applicant may have developed the disease of PRIMARY HYPOTHYROIDISM i.e. thyroid related disease, due to his exposure to snow while posted at Doda region. In such circumstances, it has to be held that the said disease has a casual connection with his service.

9. Ld. Counsel for the respondents, on the other hand, has submitted that as per rules and instructions on the subject the disease with which the applicant was suffering cannot be attributable to military service nor it can develop due to exposure to snow as contended by the ld. counsel for the applicant. Therefore, Mr Bhattacharyya submitted that it was rightly held by the Medical Board that there was no connection of the said disability/disease with his condition of service, and accordingly, he was rightly denied the disability pension. Mr. Bhattacharyya has relied on the decisions of the Hon'ble Apex Court in the case of **Controller of Defence Accounts (Pension) & Ors –vs- Balachandra Nair**, AIR 2005 SC 4391 and **UOI & Ors –vs- Baljit Singh**, 1996(11) SCC 315 and submitted that the opinion of the medical board consisting of experts in the field cannot be interfered with by the Court or Tribunal.

10. We have considered the matter carefully. Admittedly, the applicant was discharged from service on completion of his terms and conditions of service and is in receipt of his full service pensions. Though he was granted service pension as admissible, he was not granted any disability pension since his disability was found to be not attributable or aggravated by the military service in the opinion of the duly constituted medical board. He was not eligible for any disability pension as per Reg. 173 of Pension Regulations for the Army 1961 (Revised).

11. Regulation 173 of the Pension Regulation for army 1961 clearly states that disability pension can be granted only if such disability is either attributable to or aggravated by military service and is assessed as 20% or more. The relevant portion of the ibid regulation 173 is quoted below:-

“173. – Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalidated out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 per cent or over. ...”

12. In this case, it has been clearly held by the Medical Board, comprising specialists on the subject, that the disease with which the applicant was suffering has no connection with the conditions of his military service. It is, however, contended by the Id. advocate for the applicant that during the course of service the applicant was posted in snow region of Doda district for which the disease might have arisen. Moreover, he repeatedly submitted that during the time of his entry into service, there was no indication of such disease having detected by the medical authorities. It may be noted here that when the applicant was medically examined for his discharge by the release medical board, all his service particulars including places of posting are placed before the Board and the Board, after taking into considering all such aspects, came to the conclusion that the disease was not connected with his military service. It has been held by the Apex Court in umpteen number of decisions including those referred to by Mr. Bhattacharyya, Id. adv. for the respondents, that medical opinion is to be given due importance and should not be interfered with by the Court/Tribunal unless very cogent reasons exist. In this case, we are not convinced by the argument of the Id. adv. for the applicant. We do not find any cogent reason for interfering with the decision of the Medical Board. The applicant has not been able to produce any document to establish that his disease had developed due to stress and strain of service or due to climatic condition of the places where he was posted.

13. In view of what has been stated above, we do not find any merit in this case and, therefore, it is liable to be dismissed.

14. The case, thus, stands dismissed on contest. No cost.

15. Let the original records be returned to the respondents on proper receipt.
16. Let a plain copy of the order countersigned by the Tribunal Officer be furnished to both sides on observance of usual procedure.

(LT. GEN. K.P.D.SAMANTA)
Member (Administrative)

(JUSTICE RAGHUNATH RAY)
Member (Judicial)