

FORM NO. 21**{SEE RULE 102(1)}****ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA****APPLICATION NO: T.A.NO. 50 OF 2012****ON THIS 28th DAY OF JANUARY, 2014****CORAM****HON'BLE JUSTICE RAGHUNATH RAY, MEMBER (JUDICIAL)****HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)**

Sri Debadutta Sahu,
 Son of Sri Gunaru Sahu,
 Village Debahal,
 P.O. /P.S. Attabira,
 Munsiffi/District – Bargarh,
 Orissa.

.....Applicant

-VS-

1. Union of India
 Through Secretary,
 Ministry of Defence.
 New Delhi-110 011
2. Wing Commander,
 Air Force Record Office,
 Subrat Park,
 New Delhi – 10.
3. Commanding Officer (Unit) A.S.T.T.W..
 A.S.T.T.Wings.
 I.G.W.T. Air Force Station,
 Makarpura,
 Baroda (U.P.) Pin – 390 014.

..... Respondents.

For the petitioner : Mr. Sanjib Kumar Mukhopadhyay
 Mr. Mukesh Gupta.

For the respondents : Mr. Anup Kumar Biswas

ORDER

Per HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

The applicant was enrolled in the Indian Air Force (IAF) on 12.01.1993. He was invalidated out of service on 15.10.1996 barely after three years and nine months of service on medical grounds for suffering from a disease diagnosed as "Spondylo Arthropathy". The said disability for which the applicant was invalidated out was considered as neither attributable to nor aggravated by military service. Therefore, he was not granted any disability pension. He was also not granted any service pension for not completing the minimum pensionable service which is 15 years as per rules. However, at the time of invalidment, he was granted a lump sum Invalid Gratuity of Rs. 2975/-.

2. Being aggrieved for not getting any pension, the applicant filed a writ petition bearing OJC No.8887/2000 before the Hon'ble High Court of Orissa, Cuttack which was later transferred to this Tribunal vide a judicial order dated 16.01.2012 passed by the Hon'ble Division Bench and was renumbered in this Tribunal as TA No. 50/2012.

3. The case in brief is that the applicant after being enrolled in the Air Force on 12.01.1993 developed symptoms of 'polyarthrititis' in May, 1995 which later progressed to the stage of 'Spondylo Arthropathy'. The applicant was admitted in a Military Hospital (MH), Ahmadabad for the first time on 29.05.1995 after developing certain symptoms of the disease. He was first placed in medical category CEE (Temporary) for 24 weeks. Finding no improvement in his disease condition, the applicant was brought before an Invalidment Medical Board (IMB) on 17.08.1996 which was approved by the appropriate superior authorities on 06.09.1996. The IMB recommended his discharge from Air Force Service on medical grounds. He was however not granted any disability pension since the ibid IMB held that his disability was neither attributable to nor aggravated by the military service.

4. The applicant appealed against the said decision (Annexure 3 to the writ petition) which was rejected on 21.05.1999 by the first appellate authority. He preferred a second appeal before the Ministry of Defence which was also rejected on 11.06.1998 (Annexure 5 to the writ petition). He was, however, paid the due invaliding gratuity of Rs. 2975/- while he was discharged.

5. The applicant through the ibid TA has prayed for sufficient compensation for his invalidment/termination from service, in short implying the payment of disability pension which was clarified when the TA was taken up for hearing.

6. The respondents have abided by their affidavit-in-opposition (A/O) which was filed before the Hon`ble Orissa High Court reiterating that the applicant was not entitled to any other service benefit including disability pension except the invaliding gratuity which had already been paid to him. They have stated that the applicant was medically boarded out from service on 15.10.1996 barely after approximately four years of service by a duly constituted IMB under the provisions of Rule 15, Clause 2© of Air Force Rules, 1969 on account of his disease 'Spondylo Arthoropathy'. The applicant having completed three years and 276 days of service at the time of his invalidment cannot now claim for any other pension or service benefit than what has been sanctioned to him as invaliding gratuity. The respondents have further submitted that the IMB held his disability to be neither attributable to nor aggravated by the military service while assessing his percentage of disability as 30%. This does not qualify him to receive any disability pension under the existing rules since his disability is neither attributable to nor aggravated by the military service. The ground for non-grant of disability pension has been explained to the applicant by the PCDA (P), Allahabad as well as by the Air Force Records when his appeals were rejected. The respondents have submitted that in accordance with Para 17(a) of the Entitlement Rules to Casualty Pensionary Awards to the Armed Forces Personnel, 1982, the competent authorities have rejected any claim for disability pension since at the time of

invalidment, his disability was not considered as either attributable to or aggravated by the military service.

7. The respondents in their A/O have further submitted that the diagnosis of 'Spondylo Arthoropathy' was made based on clinical findings which actually manifested upon the applicant with onset in May, 1995. It was initially diagnosed as 'polyarthrititis' and progressed to the stage of 'Spondylo Arthoropathy' between May, 1995 to May, 1998. The disease was onset in May, 1995 when the applicant complained of pain and swelling in his joints. He was treated at Military Hospital, Ahmadabad from 29.05.1995 to 28.06.1995 having been hospitalized from 20.06.1995 to 29.06.1995. He was again given treatment in the same hospital from 05.07.1995 to 18.09.1995. Considering the progressive nature of the disease, the applicant was recommended to be invalidated in May, 1995 itself. Moreover, the approving authority gave the benefit of reaching finality to the applicant and recommended the applicant to remain in temporary low medical category CEE for 24 weeks. He was reviewed after 24 weeks and it was confirmed that the applicant's disease had progressed with definite radiological evidences. Hence the Medical Specialists and the Immunologist recommended on 29.05.1996 that the applicant was medically unfit for further retention in the IAF. Therefore, the applicant's invalidment out of service on medical grounds was recommended in the IMB that was held on 17.08.1996. Mr. Biswas further submitted that these medical board proceedings were approved by the Senior Adviser at the level of HQ, South Western Air Command on 06.09.1996.

8. Mr. Mukhopadhyay, Id. advocate leading Mr. Mukesh Gupta, learned Advocate on Record for the applicant, after having examined the original IMB proceedings, submitted that the original IMB proceedings are full of cuttings and use of whitener without any authentication. He is of the view that there appears to be a definite case where these documents have been tampered with only to the disadvantage of the applicant which is not in order. He further submits that the IMB has nowhere in the proceedings given any reasons as to why this disability should be treated

as a case of neither attributable to nor aggravated by the military service. Mr. Mukhopadhyay draws our attention to Para 78 of the 'Guide to Medical Officers' (Military Pensions), 2002 as per which such diseases, as was discovered with the applicant, should be treated as aggravation due to military service. The hardships of military services have definitely led to early manifestation of symptoms leading to a stage where the applicant had to suffer such degree of disablement that he had to be invalided out of service with 30% disability. Under such circumstances, he is of the view that the said IMB proceedings and the recommendation thereof with regard to the attributability/aggravation must be reviewed. Being an old case, he prays for a judicial review of such documents like IMB proceedings etc. by this Tribunal and the benefit of doubt should rest with the applicant. In this connection he draws our attention to the recent Apex Court decisions reported in AIR 2013 SC 2840 {Civil Appeal No. 4949 of 2013 (**Dharamvir Singh vs Union of India**)} and AIR 2013 SC 2827 {Civil Appeal No. 5922 of 2012 (**Veer Pal Singh vs Secretary, Ministry of Defence**)} in support of his contentions.

9. Mr. Biswas, learned counsel for the respondents contested the submissions made by Mr. Mukhopadhyay and submitted that the opinion of a duly constituted Medical Board consisting of Medical Specialists should not be interfered with by this Court. He relies on the opinion of the Specialists in Para 3 of the IMB proceedings wherein, as stated by Mr. Biswas, the Medical Board has clearly stated that the disease is neither attributable to nor aggravated by the military service. In fact an endorsement has been made that it is a 'constitutional disorder'. For this purpose he draws our attention to the Supreme Court Judgement reported in **UOI –vs- Baljit Singh, (1996) 11 SCC 3`5**, **UOI & Ors –vs- Dhir Singh China, 2003(2) SCC 382**, **Controller of Defence Accounts –vs- S. Balchandran Nair, AIR 2005 SC 4391**, **M/o Defence-vs- A.V.Damodaran, (2009) 9 SCC 140** etc.

10. Mr. Biswas concluded his argument by placing full reliance on the findings of the IMB and prays that it should not be interfered with.

11. We have considered the statement and rival submissions made by both sides. We have also perused the various citations as have been relied upon by the rival parties. We have also gone through the original IMB proceedings submitted by the respondents in detail.

12. At the outset, we would like to bring out certain observations on the original IMB proceedings dated 19.08.1996 which was highlighted in our order dated 24.07.2013 also. We observe from the original medical records that the applicant was invalidated out of service for a disease "Spondylo Arthoropathy" which was considered to be neither attributable to nor aggravated by military service. It has, however, been endorsed in part III of the IMB proceedings that the said disability was "not connected with service". It has been further amplified in Para 2 (d) of Part III of IMB proceeding that the cause of the said disease was constitutional. We find that the board, while endorsing its views in part III of the ibid IMB proceeding, had carried out a number of corrections by use of whitener but none of these corrections have been authenticated by initials. In fact we, to our surprise, observe that an endorsement was made to the effect that the disability was 'attributable to military service', but it was later scored by applying whitener and written as "No", without any authentication, implying thereby that it was not attributable to military service. Similarly, in column c of Para 2(a) "no" has been scored by whitener and 'yes' has been endorsed by unauthenticated overwriting, implying that the said disability was not connected with service. Similar changes of views by the Board have also been endorsed in Para 2(b) and Para 4 in Part III of the ibid IMB proceeding while opinion of the medical board was being endorsed. We find that such corrections without any authentication are highly irregular and it raises reasonable suspicion in our mind about the bona-fide.

13. Be that as it may, we also observe from Appendix H which has been attached between pages 4 and 5 of the IMB that the applicant has been recommended for commutation of pension whereas it is quite obvious that no disability pension was ever recommended and the applicant having had barely 4 years of service could not have been eligible for normal service pension.

leave aside any commutation. From such endorsements it reveals that these forms have been filled up in a very mechanical manner without proper application of mind by the concerned authority.

14. Even at page 5 of Part III, we find that in respect of the date of medical board there was overwriting without any authentication. Such alteration without any signature or authentication is very irregular.

15. We also find from the opinion of the IMB that, although the onset of the disability has been recorded as to be pre 29-5-95, a clear endorsement exists to the effect that this disability did not exist before entering into service. The medical board has failed to reconcile and explain as to why this was not considered to have arisen during service. There appears to be contradictions between the opinion made in Para 1 and Para 2 of Part III of the medical board proceedings.

16. In order to provide another chance to the respondents, we asked for certain documents like Invalidment documents and those relating to the service records of the applicant including nature of training etc. to obtain certain views with regard to the rationale and reasons for treating the applicant's case as neither attributable to nor aggravated by military services. However, Mr. Biswas appearing on behalf of the respondents on 21.10.2013 was not in a position to produce any of such documents but produced an internal communication that was made by the Air Force authorities addressed to the Legal Cell of the Air Force for our perusal. We find that the respondents were not in a position to improve their case any further even after taking into consideration the explanation offered by the Record Office. .

17. After going through the original invaliding medical board proceedings, we are quite convinced that the Medical Board, at different points in time, while it progressed from August, 1996 till the time it finalized its report in September, 1996, had many differing opinions with regard to the cause for attributability/aggravation of the disease. This is evident from the manner

in which the corrections/ overwriting have been made without any authentication. In fact whiteners have been used at places where the original endorsements are also quite visible that indicates conflicting opinion being contrary to each other. Therefore, there is enough reason and rationality for us not to lay much faith in such a document (IMB proceedings), which is full of unauthenticated corrections. At this stage, it will be proper for us to quote Para 78 of the 'Guide to Medical Officers (Military Pensions) 2002 which is as follows:-

"78. Spondarthritides. This is a group of diseases in which an inflammatory arthritis is characterized by negative test for Rheumatoid factor, sacroiliitis, spondylitis, asymmetric oligoarthritis, anterior uveitis, familial association and high prevalence of HLA B 27.

The spondarthritides encompasses a spectrum of diseases such as ankylosing spondylitis, Reiter's disease, juvenile chronic arthritis and enteropathic arthritis following ulcerative and crohn's disease.

The current concept of aetiology of these disorders are that they may arise as an abnormal response to infection in genetically predisposed person carrying B 27 antigen.

*Ankylosing spondylitis is a chronic inflammatory arthritis involving spine and sacroiliac joint with progressive stiffening and fusion of axial skeleton in cold climate, difficult terrain and hazardous occupation like drivers (MT, AT, tank). can adversely affect the course of disease. Bony ankylosis of vertebral joints is the predominant lesion and may be accompanied by restricted chest movement, iritis, myelopathy and cauda equine syndrome. Once the disease is acquired, the disability is irreversible and permanent. **Aggravation due to service is appropriate in all these cases.**"*

18. The emphasized part in the above clearly indicates that such diseases are normally treated as aggravated by military service. In the instant case, there is no doubt that the applicant was going through the rigorous of training etc. immediately after joining the air force service. All these factors and other environmental factors in service could well establish to indicate that the disease was either aggravated by military service or its onset was preempted and rapidly deteriorated due to such hardships in service. In either case, it is logical to consider that the disease for which the applicant was discharged from military service can be due to aggravation in service. Moreover it is quite evident from the Entitlement Rules that the onus of proof, that it was not aggravated/ attributed due to military service, lies on the authorities. The authorities

including the Medical authorities have miserably failed to justify that such a disease could not be termed as attributable or aggravated by military service.

19. In view of the above discussion, we are inclined to accept the provisions put forth by the applicant and benefit of doubt should always rest with the applicant in such a case where the respondent authorities including the IMB have not been able to substantiate any reason whatsoever to support their argument that the disability was neither attributable to nor aggravated by the military service.

20. In view of the above, TA is allowed with following directions:-

- (i) The disability for which the applicant was invalidated out of service shall be treated as aggravated by military service for which consequential benefits of disability pension and service elements of disability pension as admissible shall be paid to him.
- (ii) The percentage of disablement as opined by the IMB would remain as 30% for two years. However, the same shall continue to be valid till differently opined by another Review Medical Board (RMB). A review medical board shall be convened by the appropriate authorities for the purpose of reviewing the percentage of disability within 90 days from this day.
- (iii) The arrears of disability pension or service element of such disability pension shall be restricted to the period with effect from 1st September, 1999 i.e. three years prior to filing of the writ petition in the Hon'ble Orissa High Court.
- (iv) The PPO shall be issued and disability pension paid within 90 days from the date of receipt of this order. The arrears shall, however, be calculated and paid within 120 days from the date of receipt of this order. For any further delay, the respondents shall pay 12% interest per annum.

(v) The original records as produced by the respondents shall be returned to them upon proper acknowledgement.

(f) No costs.

21. Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both sides on observance of due formalities.

(Lt. Gen K P D Samanta)
Member (Administrative)

(Justice Raghunath Ray)
Member (Judicial)