

**IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI**

O.A. - 72/2016

No.4346832X
Ex – Sep E Rongtoy
Vill – Liengangching
P.O. Churachandpur,
Dist. Churachandpur, Manipur

..... Applicant.
By legal practitioners
for Applicant.
Mrs Rita Devi,
Mr.AR Tahbildar.

-Versus-

1. The Union of India,
REP. BY the Secretary,
Ministry of Defence,
Sena Bhawan, New Delhi-11.
2. Records, The Assam Regiment,
PIN (ARMY) 900332, C/o 99 APO.
3. Additional Directorate General,
Personnel Services, PS-4(d),
Adjutant General's Branch,
IHQ of MOD (Army), DHQ, P.O. New Delhi.
4. The Principal Controller of Defence Accounts (Pension),
Allahabad, Pin – 211014, Uttar Pradesh.

..... Respondents
By legal practitioners
for Respondents
Mr.Chandra Barua, CGSC.

PRESENT

HON'BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)

HON'BLE VICE ADMIRAL MP MURALIDHARAN, AVSM & BAR, NM, MEMBER (A)

Date of hearing : 23-03-2017

Date of Order : 19 -04-2017

ORDER

(By Vice Admiral MP Muralidharan)

1. The Original Application has been filed by E Rongtoy, Ex Sepoy, No.4346832X, seeking disability pension with the benefit of rounding off.

2. The essential facts of the case are that the applicant, who was enrolled in the Army on 02 Sep 1973, was diagnosed with "PRIMARY PIGMENTARY RETINAL DEGENERATION" of both eyes in April 1985. He was discharged from service on 26 Nov 1985 under Army Rule 13 (3) III (v) on medical grounds as a case of unwilling to continue his service being placed in Low Medical Category.

The Invaliding Medical Board assessed him to have the disability "PRIMARY PIGMENTARY RETINAL DEGENERATION" (Both Eyes) ICD 379, which was assessed at 50% for two years, but was considered as neither attributable to nor aggravated by Military Service (Annexure-R1). The applicant was sanctioned disability service element and Personal Pension vide PPO No.D/SE/161/86 dated 15 May 1986 (Annexure-R2). He was, however, not granted any disability element of pension.

3. Smt Rita Devi, the learned counsel for the applicant submitted that at the time of his enrolment, the applicant was medically fit in all respects. Nearly 12 years after his service in the Army, during which period he had served even in field and high altitude areas, he was diagnosed with PRIMARY PIGMENTARY RETINAL DEGENERATION of both eyes and was eventually discharged from service being placed in Low Medical category. The Release Medical Board assessed his disability at 50%. Even though the applicant was granted service pension and other retiral benefits, disability element of pension was not granted to him. The

applicant was informed by Respondent No.2 (Records, Assam Regiment) that his claim for disability element of pension had been rejected as his disability was considered neither attributable to nor aggravated by Military Service (Annexure-B). The learned counsel further submitted that the applicant being from a remote tribal village and being ignorant of the rules and regulations, did not prefer any appeal at that stage. Subsequently, on becoming aware from similarly placed colleagues that he was eligible for grant of disability element of pension, preferred an appeal through the ESM Pension Grievance Cell for grant of disability element of pension (Annexure-C,D). The applicant was however once again informed by Respondent No.2 that he was not granted disability element of pension as his disability was neither attributable to nor aggravated by Military Service (Annexure-E).

4. The learned counsel further submitted that since the applicant was fully fit at the time of his enrolment in the Army and no note or record was made of any disability, in accordance with Entitlement Rules for Casualty Pensionary

Awards, 1982, the applicant's disability should be considered as attributable to service. The Learned counsel therefore prayed that the applicant be granted the benefit of disability element of pension with the benefit of rounding off.

5. Shri C Barua, the learned Central Government Standing Counsel for the respondents, submitted that the applicant, who was detected with PRIMARY PIGMENTARY RETINAL DEGENERATION, was discharged from service prior to fulfilling his conditions of enrolment on medical grounds, as he was unwilling to continue in service in Low Medical Category. The Release Medical Board assessed the disability of the applicant at 50% for two years, not related to service and as constitutional in nature (Annexure-R1). The applicant was therefore granted service element of pension for life (Annexure-R2). The disability pension claim of the applicant was submitted to the adjudicating authority, PCDA (P) Allahabad, who rejected the same as it was considered as neither attributable to nor aggravated by Military Service. The applicant was informed of the decision

and was also advised that in case he was not satisfied, he could prefer an appeal within a period of six months against rejection of his claim (Annexure-R4,R5). The learned counsel further submitted that the applicant did not prefer any appeal against rejection of his claim for disability element of pension, but submitted a request through the Ex Servicemen Pension Grievance Cell, nearly 30 years later in July 2016. The applicant was informed that his claim had been rejected in 1986. He was also given copies of his Release Medical Board Proceedings and PPO as requested by him.

6. The learned counsel also submitted that the medical examination at the time of enrolment is basic in nature and therefore, hereditary ailments may not be detected. The disability of the applicant was assessed by the Release Medical Board as constitutional in nature, and hence, the disability was neither attributable to nor aggravated by service. The applicant had clearly accepted the decision of the adjudicating authority at that time and is now making a belated claim for disability element, which he

is not entitled to. The learned counsel further submitted that no injustice had been done to the applicant, as he had been granted service element of pension.

7. Heard rival submissions and perused records.

8. It is not disputed that the applicant was invalided out of service before fulfilling his conditions of enrolment on medical grounds, due to the disability "PRIMARY PIGMENTARY RETINAL DEGENERATION" (Both Eyes). It is also not disputed that the Invaliding Medical Board assessed his disability at 50% for two years, but held that it was neither attributable to nor aggravated by Military Service.

9. The Medical Board Proceedings at Annexure-R1 indicates that his disability was initially detected in April 1985 by when he had spent nearly 12 years in the service. It is also observed that the opinion of the classified specialist in Ophthalmology attached with the Invaliding Medical Board only indicates that it was an old case of Primary Pigmentary Retinal Degeneration and that the applicant was in Lower Medical Category with effect from 14

June 1985. The Specialist has recommended his release in the same medical category with the disability at 50%. Nowhere does the specialist indicate that the disability was constitutional in nature or that it was neither attributable to nor aggravated by Military Service.

10. Regulation 173 of Pension Regulations for the Army, 1961 provides for grant of disability pension and reads as follows:

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

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II."

11. The Regulation specifies two conditions for grant of disability viz., disability is to be above 20% and should be attributable to or aggravated by military service. It

further specifies that attributability or aggravation is to be determined under rules at Appendix II, ie, Entitlement Rules for Casualty Pensionary Awards, 1982. As observed Rules 5, 9 and 14 of the said rules are relevant in deciding the issue. As per Rule 5, a member is presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance. In the event of his subsequently being discharged from service on medical grounds, any deterioration in his health which has taken place is due to service. While under Rule 9 the claimant shall not be called upon to prove the conditions of entitlements, Rule 14 specifies rules to be observed in respect of diseases to decide the aggravation/attribution.

12. The above Rules were looked into by the Honourable Apex Court in **Union of India and Another v. Rajbir Singh, Civil Appeal No.2904 of 2011**, during which the Apex Court also referred to its decisions in **Dharam Vir Singh v. Union of India and Others (2013) 7 SCC 316** and held as follows:

"15. The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinion were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces"

13. The disability of the applicant, Pigmentary Retinal Degeneration, was considered by the Invaliding Medical Board as neither attributable to nor aggravated by Military Service. It is observed that the Medical Board has opined

that the disability did not exist prior to his entry into service. The Board has also opined that the disability was not related to service and is constitutional in nature. However, as observed earlier, the Specialist opinion does not indicate the disability to be constitutional in nature, nor does it consider the disability as neither attributable to nor aggravated by Military Service or that it could not have been detected at the time of his entry into service. It is also observed that in Annexure-III to Entitlement Rules for Casualty Pensionary Awards, 1982, which lays down classification of diseases, the applicant's disability is not one of those listed as not normally affected by service. Hence, in our view, without giving specific reasons, the Invaliding Medical Board considering it as a constitutional disorder, not connected with service and neither attributable to/aggravated by service, was incorrect. Therefore, based on the principles enunciated by the Hon'ble Apex Court in **Rajbir Singh** (Supra), the applicant was eligible for disability element of pension at the time of his discharge from service. However, the disability assessed was only for

a period of two years, and no medical records have been placed before us to indicate if it still persists or if any Re-assessment Medical Board was carried out. Hence, a Re-assessment Medical Board would be necessary to examine if the disability still persists and if so to what percentage.

14. In view of the forgoing discussion, the respondents are directed to convene a Re-assessment Medical Board within three months of receipt of a copy of this order with due intimation to the applicant. We, however, make it clear that the finding entered that the invaliding disability of the applicant Pigmentary Retinal Degeneration, is attributable to his military service is binding on the Board and all authorities concerned. If the Re-assessment Medical Board finds that the disability of Pigmentary Retinal Degeneration still persists and is at or more than 20%, the applicant would be eligible for grant of disability element of pension. He would then also be eligible for the benefit of rounding off of the disability pension in accordance with law, in keeping with the directions of the Apex Court in **Union of India & Ors. vs. Ram Avtar, Civil**

Appeal No.418 of 2012. It is however made clear that the disability pension, if so granted, would only be from the date preceding three years of filing of this OA, which was filed on 06.12.2016.

15. The OA is accordingly disposed of.

16. There will be no order as to costs.

17. Issue free copy to the parties.

MEMBER (A)

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MEMBER (J)