ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.99 of 2012

Friday, the 7th day of June 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)
AND
THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

(No. JC 266093K) Ex Sub Sundaramurthy
50/1551 Sagar Nivas, Anand Nagar
No. 1 Toll Gate, Bikshandarkoil
Tiruchirapalli
Tamil Nadu 621 216. … Applicant

By Legal Practitioner:
Mr. S.P. Ilangovan

vs.

Union of India, Ministry of Defence,
rep. by:
1. Defence Minister's Appellate Committee
on Pension, South Block, New Delhi 110011.

2. The Chief of the Army Staff
Army Head Quarters
Sena Bhavan
New Delhi 110 011.

3. Officer-in-Charge
Artillery Records
Nasik Road Camp
Pin 42210
APS Pin 908802, C/o 56 APO

4. The Principal CDA (Pensions)
Draupadhighat
Allahabad, UP 211014. … Respondents

By Mr. B.Shanthakumar, SPC

ORDER:

(Order of the Tribunal made by
Hon'ble Lt Gen (Retd) Anand Mohan Verma,
Member-Administrative)

1. This petition has been filed seeking examination of validity and propriety of the Release Medical Board proceedings held in May 2008 and direct the respondents to pay the eligible disability petition from the date of his discharge and pay the arrears with 12% interest.

2. The applicant was enrolled on 29th December 1983 and rose to the rank of Subedar in the army. In 2005 when he was posted in 282 Medium Regiment Faridkot, while on annual leave, he felt discomfort in his chest and reported to a civil doctor who advised him to undergo angiogram. Thereafter, the petitioner reported back to his unit after annual leave and was treated in military hospitals until he was discharged from service on 30th September 2008. At the time of discharge, he was found to be suffering from "Coronary Heart Disease" disability due to which was assessed to be 40% lifelong and not attributable to or aggravated by service. The petitioner filed two appeals against the decision of not being granted to disability pension which were rejected on account of ID not being attributable to or aggravated by service.

3. The petitioner through his application and the pleadings of the learned counsel Mr.SP Ilangovan would state that he was, at the time of enrolment in the army in December 1983, found to be fit in category "AYE". In the periodic medical examination held in 2004 at 173 MH Faridkot, he was again found to be fit in SHAPE-I. During his service, he had been posted to High Altitude Areas of Leh-Ladakh Glacier, Kargil and Arunachal Pradesh spanning a total period of 8 years in such areas. The last High Altitude Area posting of the petitioner was in the year 2001-2003 during Kargil operations. In June 2005, while on annual leave he felt discomfort in his chest which was diagnosed as mild heart attack by a civil doctor and on returning back to the Unit, the petitioner was treated at 173 MH Faridkot, MH Batinda and thereafter Command Hospital, Chandigarh. In August 2005, the petitioner was transferred to CTC, Pune where he was diagnosed to be suffering from Coronary Heart Disease Anterior Wall with Moderate LV Dysfunction (Non Constructive LAD). The petitioner would state that Command Hospital recorded its opinion that the disability suffered by the petitioner was aggravated by Military service due to stress and strain of the service conditions. This opinion was reaffirmed by the Medical Recategorisation Board held in September 2005 at 173 MH Faridkot and thereafter in March 2007. The petitioner would state that he was released from service on 30th September 2008

in pursuance of the Integrated HQ (Army) Letter No.B/10201/06-08/Vol I/MP-3, dated 12th April 2007 wherein it was directed that all Low Medical Category JCOs and OR who have completed 20/15 years of service respectively would be discharged. The Release Medical Board assessed the disability at 40% for life but wrongly opined that it was not attributed to or aggravated by service. The petitioner's two appeals against the rejection of the disability pension by PCDA(P) were rejected in a routine manner. The petitioner would plead that he never had this disease of Coronary Heart disease from his childhood till it was diagnosed in June 2005. Therefore, it is established, the petitioner would claim, that the disease was acquired during his tough army career particularly after his tenure in High Altitude Areas. The petitioner would go on to state that according to Amendment to Chapter VI and VII of Guide to Medical Officers (Military Pensions) "Ischemic Heart Disease" is an attributable disease. The petitioner would state that there is no known family history of the said disease on both parental sides of the petitioner for the past three generations. In the light of above, the petitioner would request that the propriety and validity of the Release Medical Board be examined and he be granted disability pension from the date of his discharge and be paid the arrears with 12% interest.

4. The respondents through their counter-affidavit and arguments by the Senior Panel Counsel Mr. B.Shanthakumar would state that the petitioner was enrolled on 29th December 1983 and was discharged from service with effect from 30th September 2008 after being placed in a medical category lower than SHAPE-I and not upto the prescribed military physical standard under Item I (iii) (c) of Table annexed to Army Rule 13(3) read in conjunction with Clause 2A of Rule 13. The respondents would state that the petitioner was downgraded to low medical category on 5th September 2005 due to Coronary Heart Disease and continued to be so till the time of his discharge. Under the provisions of IHQ of MoD (Army) letter dated 12th April 2007 as amended, vide letter dated 27th June 2007, he was discharged from service with effect from 30th September 2008. Prior to his discharge, the petitioner was brought before the Release Medical Board at 173 Military Hospital on 23rd May 2008 which regarded his disability as neither attributable to nor aggravated by military service and percentage of disablement was assessed at 40% for life. The respondents would argue that the onset of ID was in June 2005 while the petitioner was on annual leave and he had reported to a civil doctor. The respondents go on to argue that in the absence of evidence of infective disease like Infective Endocarditic or Embolic phenomenon post surgery/post trauma,

the ID is considered to be due to underlying atherosclerosis which is the result of interplay of hereditary biological life style factors. The onset of ID was while the petitioner was posted to a peace station and he continued to serve in a peace station till his release from service and there is no close time association of the ID with service in High Altitude Areas or Counter Insurgency areas. After the onset of ID in 2005, the petitioner was treated at 173 Medical Hospital, 174 Military Hospital, Command Hospital (Western Command) and military hospital (CTC) Pune for the above disease and at the time of his discharge, he was in an unstable condition. The respondents would state that 14 days of charter of duties prior to onset reveals no exceptional physical or mental stress and strain related to service precipitating the disease in view of which, the ID is considered as neither attributable nor aggravated by service in terms of Para 47 Chapter VI of Guide to Medical Officers 2002 amended in 2008. Since the competent authority had viewed the ID as neither attributable to nor aggravated by military service, he was not granted disability element of pension. His two appeals were carefully considered by the competent authorities and were rejected stating that the Release Medical Board has appropriately held the disability as neither attributable to nor aggravated by service. The respondents would state that the disability pension is not a fundamental right, gift or bounty which is granted to all

disabled personnel without meeting the required conditions for their welfare/benefits. It is granted only to those who fulfill the conditions laid down in Para-173 and 173A of Pension Regulations for the Army 1961. In the light of the above, the respondents would plead that the instant application is devoid of any merit and may be dismissed.

5. Head both sides and perused the documents.

6. The sole point that needs to be determined is, Whether or not the petitioner is entitled to disability pension?

7. POINT: We perused the Primary Medical Examination Report dated 29th December 1983 in respect of the petitioner and we find that he was in category "AYE" at the time of enrolment into the army. The periodic medical examination of the petitioner held on 29.5.2004, annexed with the instant application, found him in SHAPE-I. Thus it is established that the disease Coronary Heart disease Anterior Wall was acquired during his service. In the Release Medical Board held on 23rd March 2008 details of service have been listed out according to which we find that the petitioner had served from 9.4.1985 to 30.10.1986 in Lama Camp which is a Field Area, in Kargil which is an High Altitude Area from 31.10.1986 to 24.10.1988, in Dawang which is a Field Area from 1.11.1993 to 21.9.1996 and Drass (J&K) which is a High Altitude Area from 6.7.2001 to 14.8.2003. The ID which caused him to be discharged from

service was acquired in 2005 while he was serving in the Field Area. It would appear, as stated by the respondents, that there is no close time association of the ID with service in High Altitude Areas. However, it is also quite apparent that the petitioner had served for over two years in a very difficult High Altitude Areas of Drass Valley two years before" the onset of the ID. Thus, it cannot be totally denied that there is no association of the onset of the ID with service in High Altitude Areas. We also find that the 173 MH in its Recategorisation Board held on 5th September 2005 had opined that the disability was not attributable to service, but it was aggravated by service and the reason given was that the disease was affected by stress and strain of the military service. The petitioner was once again brought before Recategorisation Medical Board in March 2006 which again endorsed its opinion that the disability was not attributable to service, but was aggravated by service, due to stress and strain of military service. The petitioner continued to be under treatment until he was discharged from service under the provisions of the IHQ of MOD letter dated 12th April 2007 as amended vide letter dated 27th June 2007. The Discharge Order was communicated to the Unit, vide letter of Artillery Records, Nasik Road Camp, dated 6th February 2008 produced at Annexure R-IV by the respondents. The Release Medical Board held in May 2008 opined that the disease, 'Coronary Heart

Disease Anterior Wall' was neither attributable to service nor aggravated by service and it was not connected with military service, vide Para 47 of Guide to Medical Officers, 2002. Para 47 of the Guide to Medical Officers, 2002 reads as under:

" Ischemic Heart Disease (IHD)

IHD is a constitutional disease. It is almost always due to occlusive thrombus at the site of rupture of an atheromatous plaque in the coronary artery. Prolonged stress and strain hastens atherosclerosis by triggering of neurohormonal mechanism and automatic storms. It is now well established that autonomic nervous system disturbances precipitated by emotions, stress and strain, through the agency of catecholamines affect the lipid response, blood pressure, increased platelet aggregation, heart rate and produce ECG abnormality and arrhythmias. Therefore where exceptional and prolonged stress and strain of service can reasonably be established, aggravation can be conceded. On the other hand acute and severe mental and physical stress of very short duration may precipitate acute cardiovascular catastrophe by suddenly creating marked reduction of blood supply relative to its demand and favours coronary spasm, resulting in ischaemia. Therefore, intimate causal

relationship must be accepted and attributability can be conceded.

The service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious as quite often separation entails running of separate establishment, financial crisis, disturbance of child education and lack of security for family. Apart from this, compulsory group living restricts his freedom of activity. These factors jointly and severally can become a chronic source of mental stress and strain precipitating an attack of IHD.

Severe regimentation in the day to day service life, working to deadlines, prolonged hours of uncongenial duties are inherent in the working of services. In addition, severe mental trauma associated with operations of high pressure planning and similar other duties in three services, severe physical stress and strain of field service and active operational areas, stresses of multitude of duties and responsibility must be given consideration while establishing causal relation between acute cardiovascular catastrophe and service.

The magnitude of physical activity and emotional stress is no less in peace area. Tough work schedules and mounting pressure of work during peace time compounded by pressure of duties, maintenance of law

and order, fighting counter insurgency and low intensity was in deceptively peaceful areas and aid to civilians in the event of natural calamities have increased the stress and strain of service manifold. Hence no clear cut distinction can be drawn between service in peace areas and field areas taking into account quantum of work, mental stress and responsibility involved. In such cases, aggravation due to service should be examined in favour of the individual.

It is concluded that a myocardial infarction may be attributable to or aggravated by service or unrelated to service factors as follows:-

(a) Attributability will be conceded where: A myocardial infarction arises during service in close time relationship to a service compulsion involving severe trauma or exceptional mental, emotional or physical strain, provided that the interval between the incident and the development of symptoms is approximately 24 to 48 hours. Attributablity will be conceded in cases related to activities like high pressure planning for/in operation or extreme physical strain, but not in cases of stress and strain in office or extra/work duties which are matters of normal official life. Attributability can also be conceded when the underlying disease is either embolus or thrombus arising out of trauma in case of boxers and

surgery, infectious diseases, e.g. SBE, Vaccinia, exposure to HAA, extreme heat. However, IHD occurring in a setting of hypertension, diabetes and vasculitis, entitlement can be judged on its own merits.

(b) Aggravation will be conceded in cases in which there is evidence of:--

(i) Severe mental and/or emotional stress due to participation in operation or high pressure planning for operation or other similar activities involving equivalent stress and strain.

(ii) Severe physical stress in the field or other similar activities involving stress in peace or training during the preceding two weeks.

(iii) Atheroma manifesting itself clinically as angina, myocardial infarction, sudden death and abnormalities of the electrocardiogram.

In such cases aggravation will be conceded if an individual known to be suffering from ischaemic heart disease, or one in whom it can be otherwise established that there has been a failure to make a diagnosis of ischaemic heart disease, as a result of which he was not given suitable duties in a lower medical category and kept under observation, but allowed to continue to perform duties in a higher medical category with its connected stress and strain, resulting in illness of critical or catastrophic proportions leading to death.

There would be cases where neither immediate nor prolonged exceptional stress and strain or service is evident. In such cases the disease may be assumed to be the result of constitutional factors, heredity and way of life such as indulging in risk factors, e.g., smoking. Neither attributability nor aggravation can be conceded in such cases. "

8. The Medical Board authorities appeared to have been guided by the last sub para of Para 47 of the Guide wherein it has been stated that where neither immediate nor prolonged exceptional stress and strain or service is evident, the disease may be assumed to be the result of constitutional factors, heredity and way of life such as indulging in risk factors, and neither attributability nor aggravation can be conceded in such cases. However in the same Para 47, it is also stated that service in field and high altitude areas apart from physical hardship imposes considerable mental stress of solitude and separation from family leaving the individual tense and anxious. The Guide goes on to say that magnitude of physical activity and emotional stress is no less in peace area and no clear cut distinction can be drawn between service in peace areas and field areas taking into account quantum of work, mental stress and responsibility involved. In such cases,

aggravation due to service should be examined and decided in favour of the individual. It was in accordance with such Guidelines that 173 Military Hospital in two of its Recategorisation Board Proceedings clearly stated that the ID was aggravated by service due to stress and strain of military service. The Release Medical Board formed an opinion which is different from that of the Recategorisation Board without assigning any detailed reason for doing so.

9. We are of the view that the opinion of a Medical Board which is a body of experts must be accorded primacy and credence and must not be changed without offering valid reasons. In the petitioner's case, there are two opinions by three different Medical Boards, two of them state that the ID is aggravated by service. We are inclined therefore to accord credence to the opinion given by the Recategorisation Medical Boards held in September 2005 and March 2006, according to which the ID is aggravated by military service thus entitling the petitioner to be granted disability pension in terms of Para 173 and 173A of the Pension Regulations for the Army 1961. The point thus is answered in favour of the petitioner.

10. In fine, the application is allowed. The petitioner is entitled to disability pension from the date of his discharge. The arrears shall be paid to the petitioner with a simple interest of 9% by the respondents. Time for compliance is three months. No costs.

JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)

LT GEN (Retd) ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)

07.06.2013

Member (J) – Index : Yes/No Internet : Yes/No
Member (A) – Index : Yes/No Internet : Yes/No

To:

Union of India, Ministry of Defence,
rep. by:

1. Defence Minister's Appellate Committee
on Pension, South Block, New Delhi 110011.

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Draupadighat
Allahabad, UP 211014.

5. Mr.SP Ilangovan,
Counsel for Applicant

6.Mr. B.Shanthakumar, SPC
Counsel for Respondents

7.OIC, Legal Cell,
ATNK & K Area, Chennai.

8. Library, AFT/RBC, Chennai.

HON'BLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)
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HON'BLE LT GEN (RETD) ANAND MOHAN VERMA
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Dt: 07.06.2013