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Ex Sapper M. Kannan Vs. the Principal Controller of Defence Accounts and Another

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Court : Armed forces Tribunal AFT Regional Bench Chennai

Decided On : Nov-28-2011

Judge : A.C. Arumugaperumal Adityan (Member-Judicial) &Amp;amp; the Honourable Lt Gen (Retd) S. Pattabhiraman (Member €“ Administrative)

Appeal No. : O.A.No.48 of 2011

Appellant : Ex Sapper M. Kannan

Respondent : The Principal Controller of Defence Accounts and Another

Judgement :

(Order of the Tribunal made by Justice ACA Adityan)

1. This application is for disability pension. According to the applicant, he got enrolled in the Army MEG and Centre, Bangalore, on 5th January 1974 as a BOY at the age of 16 years and got attested as a trained Soldier on 5th March 1977. He had served in 3 Engineer Regiment at J and K Area and Ahemdabad area. He indulged actively in sports activities particularly in boxing (Lt. Fly). In 1978 he took part in boxing tournament in Poona and was severely wounded and his health got shattered which forced him to go on Annual Leave. When he reached his home, he got severe headache and he went to the nearest Air Force Command Hospital, Bangalore, where he was admitted and got treatment and he was slowly down

graded to lowest medical category EEE and was boarded out of service on 12th November 1981. At the time of Release Medical Board, the assessment of the medical disability was 30%. Totally the applicant had served for 7 years 10 months and 7 days and he was discharged under Army Rule 13(3)III(iii), for the disease Neurosis. His attempt for disability pension ended in vain. Hence, he has come forward with this application for the grant of disability pension.

2. The respondents in their common counter/reply statement would contend mainly that the application is barred by limitation and on that ground alone the same is liable to be dismissed. The respondents would further contend that all the medical documents relating to the applicant have already been destroyed during the year 2006 as per the provision contained in Para 595 of the Regulations for the Army 1987. From the Long Roll available for the applicant it is seen that he was enrolled in the Army (Madras Engineer Group) on 5th January 1974 and invalided out of service on 11th November 1981 under Army Rule 13(3)III(iii). The date of birth of the applicant is 26th December 1958. Relying on the judgment of the Delhi High Court in C.W.No.2063 of 93 and C.W.No.1267 of 1993 (Hans Ram Vs. Union of India), dated 31.07.1995, the respondent would contend that the applicant has approached the Tribunal after an inordinate delay of more than 25 years and he is not entitled to the relief asked for in this application. As per Rule 198 of the Pension Regulations for the Army Part-I, 1961, the minimum qualifying service actually rendered and required for grant of invalid pension is 10 years. Since the applicant has not completed 10 years of service, he is not entitled to any invalid pension. Hence, the application is liable to be dismissed.

3. The applicant has argued his case in person. We heard the learned Central Government Counsel Mr.R.Priayakumar and also perused the relevant materials including the one produced by the applicant viz., Disability Certificate issued by the Record Officer, dated 19th September 1990.

4. Now the point for consideration is whether the applicant is entitled to the disability pension for the circumstances narrated in the affidavit to the application?

5. The Point:- The learned Central Government Counsel Mr.R.Priyakumar would contend that except the Long Roll all other medical documents and other

documents relating to the applicant have been destroyed even in the year 2006 itself as per Para 595 of the Regulations for the Army 1987, since the applicant had approached this Tribunal after a lapse of 30 years from the date of release. It is seen from the reply letter No.1359916/Pen(D)/95, dated 14th September 2001, that the applicant had approached the respondents from the year 1990 continuously upto the year 1998 for disability pension and in the reply sent through those letters, it has been categorically stated that the applicant is not eligible for disability pension since the medical opinion in IMB was to the effect that the disability suffered by the applicant is neither attributable to nor aggravated by military service. But, unfortunately in this case, AFMSF-16 is not available to confirm whether the opinion of the Medical Board was as to the effect that the disability under which the applicant is suffering viz. NehroticDepressive Reaction is neither attributable to nor aggravated by Military Service. But, today, the applicant has produced a Disability Certificate dated 19th September 1990 wherein the Invaliding Disability under which the applicant was suffering was stated as Nehrotic Depressive Reaction.

5(a) According to the applicant, on 28th February 1997 he had written to the Secretary, Government of India, Ministry of Defence, New Delhi, for convening a Re-survey Medical Board at Military Hospital, St.Thomas Mount, Chennai, for reassessing his disability to know whether he is entitled to disability pension or not. It is the case of the applicant that while doing boxing in the Army he had suffered the disability. In this regard it is pertinent to note that in Annexure 3 to Appendix II to Pension Regulations for the Army 1961, Part-I, the diseases Psychosis and Psychoneurosis have been categorized under the Heading Diseases Affected by Stress and Strain. The grievance of the applicant is that he has not received any reply from the first respondent in respect of his claim for constituting Re-survey Medical Board under his letter 28th February 1997. Under such circumstances, We are of the considered view that an opportunity must be given to this unfortunate applicant to undergo a thorough test before the Re-survey/Review Medical Board at Military Hospital, St.Thomas Mount, Chennai, at an early date. Point is answered accordingly.

6. In fine, the application is disposed of in the following manner:-

The respondents are directed to convene a Re-survey/Review Medical Board at Military Hospital, St.Thomas Mount, Chennai, to review the case of the applicant within two months from today. Whether the applicant is entitled to disability pension or not is to be decided only on the opinion of the Re-survey/Review Medical Board to be held for the applicant. The applicant is also directed to approach The Director, Directorate of Ex-servicemens Welfare, Rajya Sainik Board, 22 Raja Muthiah Road, Chennai-600 003, for any exgratia or any other financial assistance. No costs.

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