

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Transferred Application No. 436 of 2010
[Writ Petition No. 1309 of 2009 (S)]**

Thursday the 30th day of September, 2010

“Hon’ble Mr. Justice A.N. Varma, Member (J)
Hon’ble Lt. Gen. B.S. Sisodia, Member (A)”

Ex No 2678429L Naik Mullu Lal Rajak s/o Shri Nona Lal Rajak resident of Nai Basti Marhotal, Near ITI Jabalpur (MP).

Applicant

By Legal Practitioner Shri R Chandra , Advocate.

Versus

1. Union of India, Through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, Army Headquarters, DHQ PO New Delhi.
3. The Officer Incharge Records The Grenadiers, Grenadier Regimental Centre Jabalpur (MP).
4. The Chief Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

Respondents

By Legal Practitioner Shri K D Nag , Advocate, Senior Central Government Counsel.

1. This matter has come before us by way of transfer under section 34 of the Armed Forces Tribunal Act 2007 from Madhya Pradesh High Court at Jabalpur. The Applicant was enrolled in Indian Army as Sepoy (Washerman) on 04.12.1983. While serving with 47 Infantry Brigade the Applicant was diagnosed to be suffering from disease 'Graves Disease' and as such was placed in low medical category P-2 (Permanent). He thereafter was discharged from service with effect from 01.01.2004 being a case of low medical category. His claim for disability pension was denied as such he approached the Madhya Pradesh High Court at Jabalpur through Writ Petition no. 1309 of 2009 (S) praying therein for the following reliefs:-

- (a) A writ order or direction in the nature of mandamus thereby directing the respondents to grant disability pension to the petitioner from the date of retirement with arrears and interest at the rate of 18 percent per annum.
- (b) Any other appropriate writ, order or direction which the Hon'ble court may deem just and proper in the nature and circumstances of the case.

2. We have heard Shri R Chandra Learned Counsel for the Applicant and Shri K.D Nag, Senior Central Government Counsel for the respondents.

3. The Learned Counsel for the Applicant vehemently argued that the Applicant suffered with disease 'Graves Disease' having been posted in High Altitude Area. He drew our attention towards Annexure P-1 of the Medical documents perusal of

Affidavit). The documents as per Medical Board though recorded that the disease was aggravated due to stress and strain but the respondent No. 4 refused the disability pension as according to it the disease was metabolic disorder and not related to Military service. The Learned Counsel argued that the Medical Board having recorded a categorical finding that the disease was aggravated by Military Service PCDA had no jurisdiction to reject the claim and observe that metabolic disorder is not related to military service. It was stressed upon that the entire approach of the respondent no. 4 was manifestly erroneous.

3. Shri K D Nag, Learned Senior Central Government Counsel for the respondents submitted that the claim of the Applicant was rightly not considered as the respondent no. 4 was perfectly justified in recording a finding that disease was a metabolic disorder not related to Military service. He further argued that since against the order of PCDA an appeal is provided the Applicant having not availed the same, the petition was not maintainable.

4. Having gone through the record we are of the view that since the Medical Board had recorded a categorical finding that the disease 'Graves Disease' was aggravated by Military service and the disability assessed as 20 percent for life, the claim of the applicant for disability pension could not be rejected as the PCDA is not an expert body. The question as to whether or not a particular disease is attributable to or aggravated by military service is a question to be decided by the

case reported in Mil LJ 2009 SC 107 Secretary, Ministry of Defence and others Versus Damodaran AV that the Medical Board is an expert body and its opinion is entitled to be given due weightage, value and credence. Medical Board's opinion to be accorded supremacy. Thus the entire approach of the respondent no. 4 in denying disability pension to the applicant is manifestly erroneous.

5. The Transferred Application in the circumstances succeeds and is allowed. The order passed by the respondent No. 4 is set aside. The Applicant shall be entitled to disability pension as determined by Respondent no. 2 (Medical Board).

6. No order however as to costs.

(Lt. Gen. B.S. Sisodia)
Member (A)

(Justice A.N. Varma)
Member (J)

NKS