

SEE RULE 102 (1)ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATAO.A. NO. – 18/2015DATED : THE TWENTY SEVENTH DAY OF JULY, 2018CORAM

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC, MEMBER (ADMINISTRATIVE)

APPLICANT (S) : Meher Mallick
s/o Late Fajal Mallick
Town & PO – Gushkara
PS – Aushgrani
Dist – Burdwan (WB) – 713 128

Versus

RESPONDENT (S) : (1) The Union of India, service through
The Defence Secretary, Ministry of Defence
South Block, DHQ, PO, New Delhi – 110 011

(2) The Chief of the Army Staff
Integrated IHQ of MoD (ARMY)
South Block, DHQ PO, New Delhi – 110 011

(3) The Officer-in-Charge
Signals Records
Jabalpur (MP)
Post Bag No. – 5
PIN - 482 001

Counsel for the applicant (s) : Mr. Subhash Chandra Hazra

Counsel for the Respondent (s) : Mrs. Hema Mukherjee

ORDER

PER LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC,
MEMBER (ADMINISTRATIVE)

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act, 2007 (The Act), praying for grant of disability pension to the applicant who was invalided out of service due to low medical category EEE under Army Rule 13 (4) (iv).

2. The facts of the case are that the applicant was enrolled in the Corps of Signals on 27.06.1994 and was invalided out of service w.e.f. 15.12.1994 under Army Rule 13 (3) (iv) due to "PULMONARY TUBERCULOSIS" (011) in low medical category EEE.

3. He had rendered only 173 days of service in the Army while he was undergoing his basic military training at 3 Military Training Regiment at 2 Signal Centre (Goa), he was admitted at Military Hospital at Panaji where he was diagnosed with "Pulmonary Tuberculosis" (0.1) and placed in low medical category EEE for the ibid disability. In accordance with Army Rule 13 (3) Item – III (IV), he was recommended to be invalided out from service in low medical category CEE by the duly constituted Medical Board which was held on 07.09.1994 at Military Hospital (CTC) Pune. The petitioner was physically examined by specialized medical authorities and his disability was opined as **"neither attributable to nor aggravated by military service and not connected with military service due to individual got disease prior to entry in service"** with an assessment of degree of disablement at 100 % for one year vide AFMSF-16 dated 07.09.1994 (Photocopy of AFMSF 16 dated 08.09.1994 is available on record – Annexure R-1). Applicant's disability pension claim along with all medical service document was forwarded to PCDA (P), Allahabad vide Signals Records letter No. P/15384494/DP-3/NER dated 03 June 1996 (Available as Annexure R-II); which was rejected by PCDA (P), Allahabad in consultation with Medical Advisor (Pension) on the plea that the disability **"is not attributable to military service and does not fulfill the condition, namely it existed before and has remained aggravated thereby"** vide letter No. G-3/96/1448/VILL/90 dated

06 Sep 1996 (available as Annexure-III). The above fact was communicated to the applicant vide Signals Records letter No. P/15384494/DP-4/NER dated 23.02.2012 (available as Annexure-IV).

4. We have perused all the medical documents and attached enclosure. The Summary and opinion of Lt Col KE Rajan, Classified Specialist (Medicine and Chest Physician) of MH (CTC), Pune 40, dt 28.08.1994 is reproduced below : -

“ This Rect aged 19 yrs, having 3 week of trg to his credit presented to MH Panaji with features of cough, haemoptysis and weight loss of 5 kg. Chest was clear on admission to MH (CTC). ESR was 10 mm fall. Mantoux – 13 mm. Sputum AFB smear positive. Chest X-Ray showed scion nodular shadows LMZ/LUZ. He was placed on 2 SHRZ/HR regimen wef 13 Aug 94. He is tolerating drugs well. MTB culture report awaited.

The individual has shown partial improvement in that he has become asymptomatic. Gained 5 kg weight. Chest is clear. Sputum AFT still positive. Chest X-Ray – No changes.

A case of Pulmonary Tuberculosis, clinically, radiographically and bacteriologically. Being a rect he is rec to be invalided of service in Cat "EEE" for "PULMONARY TUBERCULOSIS".

He will require a period sanitorium treatment, duration of which will depend on his response.

Advised

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- XXXXXXXX
- XXXXXXXX
- XXXXXXXX
- XXXXXXXX

Sd/-z z z z z z z z z z z z z z
(K. E. Rajan)
Lt Col
Cl. Spl. (Med)
Chest Physician

In view of the above the indl is brought before the medical board.

Sd/- z z z z z z z z z z z z z z z z
(RAVI KALRA)
Surgeon Lieutenant Commander
INDIAN NAVY

5. As is in the opinion of the Medical Board (Part III), where it has been specifically stated that "Indl got disease prior to entry in service and hence not connected with service" coupled the fact that it was detected within 3 weeks of his reporting for training and that it was classified as 'Not Attributable Nor Aggravated by Military Service', his claim for Disability Pension was rightly rejected by the PCDA (P), Allahabad.
6. The application is accordingly dismissed.
7. No order as to cost.
8. Original documents held with the registry will be returned to the Records Signals by Tribunal Officer on proper receipt.
9. A plain copy of this order to be supplied to both the parties by the Tribunal Officer after observing all usual formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)

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