
(2026) 02 KL CK 1674

In the High Court Of Kerala

Case No : Writ Petition (C) No. 44860 Of 2024

Havildar B Manikuttan

APPELLANT

Vs

Union Of India, Represented By Its Secretary

RESPONDENT

Date of Decision : 09-02-2026

Acts Referred:

Citation : (2026) 02 KL CK 1674

Hon'ble Judges : K. Natarajan, J;Johnson John, J

Bench : Division Bench

Advocate : Ratheesh B., Gyothish Chandran, S.Biju

Final Decision : Allowed

Judgement

Johnson John, J

1. The writ petitioner was the applicant in O. A. No. 21 of 2024 before the Armed Forces Tribunal, Regional Bench, Kochi and as per order dated 27.06.2024, his application against non grant of disability pension was dismissed for the reason that he was discharged from service on own request and that the applicant was assessed by the Release Medical Board with the disability 'Bronchial Asthma' at 20% for a period of two years and there is nothing in the certificate to show that the disability is incapable of improvement.

2. Heard Sri. Ratheesh B., the learned counsel for the petitioner and Sri. S. Biju, the learned Senior Central Government Counsel for the respondents.

3. The learned counsel for the writ petitioner argued that the writ petitioner was enrolled in the army on 04.10.1986 in a physically and medically fit condition and in the year 1994, while he was posted at Udampur (Jammu and Kashmir), he was diagnosed with Bronchial Asthma. It is pointed out that the medical category of the applicant was downgraded to 'BEE permanent' and he was constrained to avail discharge from service due to medical issues.

4. The learned counsel for the writ petitioner pointed out that even though in

column No. 4 of Annexure A2 opinion of the Medical Board, the probable duration of the degree of disablement of 'Bronchial Asthma' is shown as 20% for two years, the entry in column No.6 and the entries in the medical sheet in page No.4 of Annexure A2 will show that the applicant was recommended to be released in medical category 'BEE permanent' and therefore, considering the fact that Bronchial Asthma is a chronic, lifelong condition without any permanent cure, the Medical Board is not justified in restricting the disability for a period of two years.

5. In this connection, the learned counsel for the writ petitioner also relied on the decision of the Honourable Supreme Court in Commander Rakesh Pande v. Union of India and others (order dated 28.11.2019 in Civil Appeal No. 5970/2019), wherein the Honourable Supreme Court referred to paragraph 7 of the letter dated 07.02.2001 of Government of India regarding the modalities for implementation of the recommendations of the Fifth Central Pay Commission that no periodical reviews by Resurvey Medical Boards shall be held for reassessment of disabilities. In the said case, it was also held that in case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life, unless the individual himself requests for a review. In that case, the Apex Court took the disability of Non-insulin Dependent Diabetes Mellitus (NIDDM) and Hyperlipidaemia at 20% for 5 years assessed by the Release Medical Board as one for life.

6. The learned Senior Central Government Counsel appearing for the respondents argued that in this case, the disability assessed by the Medical Board is only for two years and hence, the same is not a permanent disability and he was also not invalidated out of service, but discharged from service at his request and therefore, his claim for disability pension is not sustainable. It is pointed out that even though Annexure A4 letter dated 19.05.2017 of the Ministry of Defence, Government of India, extended the benefit of disability pension to persons discharged voluntary or otherwise, the petitioner herein does not satisfy the conditions therein. It is pointed out that to avail the benefit of Annexure A4 letter, the concerned Armed Forces personnel should still be suffering from the same disability which should be assessed at 20% or more on the date of effect of the said letter dated 19.05.2017 and in the absence of any document to show that the petitioner is still suffering from the same disability, he is not entitled for the benefit of Annexure A4 letter.

7. It is well settled that it is to be presumed that a member has been in sound physical and mental condition upon entering service, except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds at any subsequent stage, that any such deterioration in his health which has taken place, is due to such military service. Further, Annexure A2, opinion of the Release Medical Board, also shows that the disease has been aggravated by military service.

8. The learned counsel for the writ petitioner also placed reliance on Regulation

173 of the Pension Regulations for the Army Part-I, 1961, which reads thus:

" Primary conditions for the grant of disability pension.

173. Unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided from service on account of disability which is attributable to or aggravated by military service 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 rules in Appendix II."

9. The learned counsel for the writ petitioner cited the decision of the High Court of Delhi in Mahavir Singh Narwal vs Union Of India and another dated 05.05.2004 in CW No. 2967/1989, wherein it was held as follows:

" ...The question is whether on account of seeking discharge on compassionate ground the petitioner loses his right to claim disability pension although such disability had been attributable and aggravated on account of military service. The reliance placed by the learned counsel for the respondent on Pension Regulations 173 provides answer to this question. Regulation No. 173 lays down where disability is attributable or aggravated by military service and how same has to be determined under the rules in Appendix II. Rules 1 and 2 of Appendix II are as follow:

: "1. With effect from 1st April, 1948 in supersession of all previous orders on the subject, the entitlement to disability and family pension, children allowances and death gratuities will be governed by the following rules. Invalidating from service is a necessary condition for the grant of a disability pension. An individual who at the time of his release under the Release Regulations is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCOS/ORS/NCS(E) who are placed permanently in a medical category other than "A" and are discharged because no alternative employment suitable to their low medical category can be provided as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have invalidated out of service.

2. Disablement or death shall be accepted as due to military service provided it is certified that:

(a) the disablement is due to a wound /injury, or disease which

(i) is attributable to military service or

(ii) existed before or arose during military service and has been and remains aggravated thereby,

(b) the death was due to or hastened by

(i) a wound, injury or disease which was attributable to military service , or

(ii) the aggravation by military service of a wound , injury or disease which existed before or arose during military service."

On careful perusal of the aforesaid rule it is manifestly clear that invalidated from service is necessary condition for grant of disability pension. What has to be seen for entitlement for disability pension is whether an individual at the time of his release was in a low medical category than that in which he was recruited if it was so then such person will be treated as invalidated from service."

10. In the above decision, it was also held as follows:

"...What is relevant is whether the mandate of Pension Regulation 173 read with Rules 1 and 2 of Appendix II has been taken into consideration or not. Merely because a person has attained discharge on compassionate ground although his disability has been acquired on account of stress and strain of military service will not be a ground to reject the claim of disability pension, it has been invalidated act in terms of Appendix II of Rule 173. We allow the writ petition and direct the respondent to grant disability pension to the petitioner on the basis of assessment of 30% disability as opined by the Release Medical Board in the year 1979 up to date. ..."

11. As noticed earlier, the Release Medical Board assessed the disability 'Bronchial Asthma' at 20% for two years with a definite finding that the disability is aggravated due to military service and he is also recommended to be released in Medical category BEE permanent and therefore, considering the fact that Bronchial Asthma is a chronic lifelong condition that currently has no permanent cure, we find that the petitioner is entitled for disability element of pension.

In the result, the writ petition is allowed and the respondents are directed to grant disability pension to the petitioner on the basis of assessment of 20% disability by the Release Medical Board in the year 1996 up-to-date. Arrears of disability pension shall be paid to the petitioner within a period of three months, failing which the unpaid arrears would carry interest at 8% per annum.