

(20) 06 AFT CK 0004

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 281 Of 2017, Miscellaneous Application No. 377 Of 2017

KS Rathore

APPELLANT

Vs

Union Of India And
Others

RESPONDENT

Date of Decision: June 19, 0020

Acts Referred:

- Armed Forces Tribunal Act, 2007 - Section 14

Hon'ble Judges: Sunita Gupta, J; B.B.P. Sinha, Member (A)

Bench: Division Bench

Advocate: AS Puar, KK Tyage

Final Decision: Dismissed

Judgement

MA 377/2017

1. Vide this M.A., the applicant seeks condonation of delay of 1934 days in filing the present OA. Keeping in view the averments made in the

application and finding the same to be bonafide and in the light of the decision in Union of India and Others Vs. Tarsem Singh [2008 (8) SCC 6487, we

allow the instant MA and condone the delay of 1934 days in filing the OA.

2. MA No 377 of 2017 stands disposed of accordingly.

OA 281/2017

Being aggrieved by denial of disability pension, the applicant has filed the present Original Application under Section 14 of the Armed Forces Tribunal

Act, 2007 wherein he has sought the following reliefs:-

(1) Petitioner, hence, prays for grant of disability pension in accordance with the applicable Rules and as held by the Honible Supreme Court vide

Annexure A-1 to A-5 and The Entitlement Rules, 1982, by setting aside that part of the Medical Board (Annexure A-6) and the consequent rejection

(Annexure A-8 Colly) wherein the disability has been opined to be neither attributable to, nor aggravated by military service on the pretext that it had

occurred in a 'peace area' being not only in conflict with the Rules but also in direct contravention of a series of decisions of the Hon'ble Supreme

Court (supra);

(ii) That the Respondents may be directed to grant the benefit of broad banding of the fresh percentage of disability element henceforth applicable to

the Applicant;.

(iii) With a further prayer that the Respondents may be directed to release the disability pension as per (i) and (ii) above, and its arrears with heavy

costs and compensation and interest within a time-bound manner;

(iv) Any other relief which the Hon'ble Tribunal may deem fit in the interest of justice and in favour of the Petitioner.

2. Brief facts of the case are that the applicant served in the ranks from 20.08.1973 to 11.06.1982. Thereafter, he was commissioned in the Indian

Army on 12.06.1982 and was discharged from service on attaining age of superannuation on 31.07.2008 in low medical category due to disability

'Anterior Wall Myocardial Infraction' having rendered about 35 years of service. The Release Medical Board (RMB) of the applicant was held on

18.03.2008 at Military Hospital, Ambala Cantt which assessed his disability @ 30% for life and considered as neither attributable to nor aggravated by

military service (NANA). Disability pension claim of the applicant was rejected vide order dated 04.07.2008. Thereafter First and Second Appeals

preferred by the applicant were also rejected by the competent authorities vide orders dated 17.07.2009 and 02.02.2011 respectively. It is in this

perspective that this O.A. has been filed.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Indian Army in medically and physically fit condition. It was further

pleaded that a member is to be presumed in sound physical and mental condition upon entering service if there is no note or record to the contrary at

the time of entry. In the event of his subsequently being invalided out from service on medical grounds, any deterioration in his health is to be

presumed due to service conditions. He pleaded that a fortnight prior to suffering from the disease 'Anterior Wall Myocardial Infraction' in Nov 2007,

the officer was involved in preparations for exercises of the Strike Corps, which resulted in stress and strain and the applicant suffered from heart

attack. The action of the respondents in denying disability pension to the applicant is illegal. In this regard, he relied on the decisions of the Hon'ble

Supreme Court in Dharamvir Singh v. Union of India and others, (2013) 7 SCC 316 and Union of India & Another Versus Rajbir Singh (Civil Appeal

No. 2904 of 2011, date of decision 13.02.2015) and submitted that for the purpose of determining attributability of the disease to military service, what

is material is whether the disability was detected at the time of enrolment and if no disability was detected at that time, then it is to be presumed that

the disability arose while in service, therefore, the disability of the applicant is to be considered attributable to or aggravated by service and he is

entitled to get disability pension @30% and the same is to be broad banded to 50%. The Ld. Counsel for the applicant pleaded for grant of disability

pension to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that since the RIVB has opined the disability as NANA on the ground that the onset

of disease was in peace and not related in time space with exceptional stress/strain due to military service, the applicant is not entitled to disability

pension. He further accentuated that the applicant is not entitled to disability pension in terms of Rule 173 of Pensions Regulations for the Army 1961

(Part-I) which stipulates that, ""unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided out of

service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over but in the instant case the

disability of the applicant has been assessed at 30% for life and considered as NANA, therefore the applicant is not entitled to disability pension. He

pleaded the O.A. to be dismissed.

5. Having heard the learned counsel for both the parties and perused the records, the only question that needs to be answered is, whether the disability

of the applicant is attributable to or aggravated by military service?

6. On careful perusal of the documents, it has been observed that the applicant was enrolled on 20.08.1973, thereafter he got commissioned in Indian

Army on 12.06.1982 and discharged from service on attaining age of superannuation. On perusal of 1st page of Army Hospital (R&R), Delhi Cantt

Sick Leave Medical Board Proceedings, we have noted that the officer first suffered from the disability ""Anterior Wall Myocardial Infraction"" on 04

Nov 2007, while he was walking to Vaishno Devi Shrine for pilgrimage. We have also noted that the disability of the officer originated on 04.11.2007

and thereafter he was treated at Military Hospital Ambala and Chandigarh and finally referred to Army Hospital R&R, Delhi ""Cantt. At the time of

his discharge from Army Hospital R&R, Delhi Cantt., the specialist doctor, i.e., Col Viney Jetley, Senior Advisor Medicine and Cardiology has opined

in the medical board proceedings dated 25.11.2007 that 'Smoking' of applicant is a risk factor. Thereafter in January 2008, the Release Medical Board

considered the disease of the applicant as NANA on the grounds that onset of the disease was in peace and not related in time - space with

exceptional stress/strain due to military service. In Summary and opinion of Army Hospital R&R, Delhi Cantt Medical Sheet date 09.01.2008, Col VK

Arora, Senior Advisor Medicine & Cardiology endorsed as ""Presentation chest pain moderate to severe retrosternal radiating to Lt Shoulder while on

pilgrimage to Vaishno Devi temple. Reported to MN Ambala on 07.11.2007 where thrombolical with STK for recurrence of pain on 07.11.2007.

Patient further evaluated at CH (WC), Personal history - reformed smoker, quit smoking 10 years back"". Thus, from the above facts, it is clear that

the officer had been a smoker in the past and while one Medical Board states that he was a smoker at the time of onset of disease, the other Medical

Board states that he is a reformed smoker who has quit smoking ten years back.

Notwithstanding the above, perusal of duties performed by the

applicant from 25.10.2007 to 07.11.2007, i.e., 15 days prior to onset of the disability on 07.11.2007 (signed by Col Arvind Singh, Col T on 04.01.2008),

indicates that the officer has done routine office work from 0830 hrs to 1400 hrs and evening walking on daily basis, which involves no exceptional

stress and strain of military duty. Thus, the contention of the applicant that he suffered the disability due to stress and strain of military preparing for

exercise lacks merit.

7. Additionally, it is well known that smoking increases the risk of heart attack by 2-4 times. The adverse effects of smoking on health are well known

that is why cigarette packets carry statutory warning on health hazards. Since smoking cigarettes is known to damage the heart, blood vessels and

blood cells and is also known to build up plaque in the blood vessels and reduce blood flow and there is no medical evidence to suggest that 100% and

full recovery of damage caused to body due to smoking can take place after quitting smoking, hence such matters must be left to the opinion of

doctors. In the above situation we are not inclined to give benefit of doubt to the applicant. Thus, in sum and substance we are of the opinion that in

this case, we have no valid reasons to interfere with the opinion of medical board declaring this disease as NANA.

8. It has been well settled by the Hon'ble Supreme Court that the opinion given by the Medical Board which is an expert body on health matters should

be given due weightage and credence. While pronouncing judgment in Civil Appeal No 1837/2009, titled Union of India & Another vs. Ex Rfn

Ravinder Kumar, the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that opinion of Medical Board should not be over ruled judiciously

unless there is a very strong medical evidence to do so. Relevant part of judgment is as given under:-

Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension

brushing aside the opinion of the Medical Authorities, record the specific finding to the effect that the disability was neither attributable to

nor aggravated by military service, the court should not ignore such a finding for the reason that Medical Board is specialized authority

composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability

due to military service and the conditions of service resulting in disablement of the individual".

9. Additionally, the Hon'ble Supreme Court judgement in Civil Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India & Ors. has again

stated that opinion of the medical board should not be overruled till there are very valid reasons and strong medical evidence to dispute the opinion of

Medical Board. The relevant part of the aforesaid judgment is as given below:-

21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such

report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of

the Review Medical Board.

10. Therefore, we are not inclined to interfere with the opinion of RMB. The O.A. is, therefore, devoid of merit and deserves to be dismissed. It is

accordingly dismissed.

11. No order as to costs.

12. Pending application(s), if any, also stand disposed of.

Pronounced in the open court on 19th June 2020.