
(20) 06 AFT CK 0006

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 1301 Of 2018

Dilip Murlidhar
Sonwane

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: Ved Prakash, V.S. Mahndiyan

Final Decision: Disposed Of

Judgement

1. Being aggrieved by denial of service element, 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: -

Direct the respondents to grant disability pension including service element w.e.f the date of release of the applicant with all consequential

benefits.

Direct the respondents to pay arrears with interest @ 12% from their retirement with all consequential benefits.

To pass any such other orders/directions as the Hon'ble Tribunal may deem lit in the circumstances of the present case.

(1) Cost of this OA may be provided for.

2. Brief facts of the case are that the applicant was enrolled in the Indian Navy on 31.01.2003 and was discharged from service w.e.f. 31.01.2013 in

low medical category due to (i) 'Spondyloarthropathy ICD M 47.2' and (ii) Avn Head of Femur (Rt) Hip'. The medical Board has assessed first

disability @ 20% for life aggravated by military service and the same was rounded off to 50% for life vide order of this Tribunal dated 04.09.2017.

The applicant is presently receiving only disability element of disability pension and he has not been granted service element of disability pension. On

account of non receipt of service element, a legal notice was served to the respondents on 15.01.2018. 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 Navy in a medically and physically fit condition. His disability has

been conceded as aggravated by the RMB hence the applicant is entitled for disability pension. The disability pension consists of both service

element and disability element. However the respondents have unfairly granted only disability element to the applicant. Ld. Counsel for the applicant

has relied upon judgment of Regional Bench, Kochi in O.A. No 13 of 2013 in T Sreekumar Nair vs UOI & Ors and Regional Bench, Lucknow in

T.A. No 93 of 2010, Prayag Singh Parihar vs UOI & Ors and pleaded that the applicant be granted service element w.e.f. his date of discharge.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant was discharged from service and not invalidated out of service

therefore he is not entitled to receive service element. Ld. Counsel for the respondents further submitted that Entitlement Rules, 1982 and para 101 of

Pension Regulations for the Navy 1964 do not entitle the applicant to receive service element as he was discharged from service before completing 15

years i.e. minimum pensionable service. He pleaded the O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. Following facts about this case are clear to us:-

(a) That the applicant was discharged from NAVY in low medical category on 31.01.2013 with 9 years & 10 months of service.

(b) That the RMB has assessed his first disability @ 20% for life aggravated by military service.

(c) That vide this Tribunal order dated 04.09.2017, the applicant was given the benefit of broad banding and his disability was broad banded from 20%

to 50%.

(d) However, the respondents have issued a PPO which is granting only disability element and not service element.

(e) Now the applicant has filed this O.A. for grant of service element and respondents have not filed a clear reply as to why they have restricted the

applicant to receive only disability element when the first disability was aggravated by military service.

7. It is not disputed that the payment of disability pension (service element and disability element) is governed by The Navy (Pension) Regulations,

1964 which envisages that in case the disability of an incumbent is either attributable to or aggravated by military service, the individual shall be entitled

to disability pension.

8. In this context we have gone into the judgment in the case of Prayag Singh Parihar, vs Union of India & Ors, T.A. No. 93 of 2010 decided on

06.04.2016 by Co-ordinate Bench of this Tribunal (Lucknow Bench) and found that the Tribunal has allowed a similar case and directed the

respondents to pay the service element with arrears from the date of discharge along with 10% interest.

9. Further in a similar case, the Hon'ble Supreme Court has upheld Regional Bench, Kochi judgment dated 26.10.2010 and 12.04.2011 in Civil Appeal

No 4714-4715 of 2012 (decided on 07.11.2019), Union of India & Ors vs V.R. Nanukuttan Nair, operative portion of which is as under:-

21. The quantification of disability pension in the cases of an individual, who has not completed qualification service is dealt with in

Regulation 107. Sub-clause (a) of Clause (1) of Regulation 107 deals with the situation where the individual has rendered sufficient service

to qualify for a service pension i.e. 15 years of service in terms of Regulation 78.

However, sub-clause (b) comes into play where the

individual has not rendered sufficient service to qualify for service pension. In cases where the disability was suffered while flying or

parachute jumping, the minimum service pension is appropriate to his last rank and group but in all other cases, the service pension is

restricted to minimum of two-thirds of the minimum service pension. For such reason, the disability element would be in addition to the

service pension by cumulative reading of Regulation 78, Regulation 105B and Regulation 107 of the Regulations. The service pension is to

be assessed on the basis of the minimum service pension laid down for an able individual of the same group in Regulation 107 of the

Regulations.

10. In view of the above and the ruling set out on admissibility of service pension by the Hon'ble Supreme Court judgment dated 07.11.2019 (supra)

the O.A. is allowed. The impugned orders are set aside. In addition to disability element, the applicant shall be entitled to receive his due service

element of disability pension w.e.f. his date of discharge i.e. 01.02.2013 along with arrears. Respondents are required to implement this order within

four months from receipt of a certified copy of this order. Default will invite interest @ 6% p.a.

11. No order as to costs.

12. Pending applications, if any, are disposed of accordingly.

Pronounced in the open court on 19th June 2020.