

(20) 06 AFT CK 0007

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 1388 Of 2017, Miscellaneous Application No. 1032 Of 2017

Krishan Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 17, 0020

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

Bench: Division Bench

Advocate: I.S. Yadav, Tarunvir Singh Khehar

Final Decision: Disposed Of

Judgement

MA 1032 OF 2017

1. For the reasons carved out in the application, the delay of 7330 days in filing of Original Application is condoned. MA 1032 of 2017 stands disposed off.

OA 1388 OF 2017

The applicant, Capt. Krishan Kumar (Retd.), through the medium of the instant Original Application is seeking the following reliefs:

(a) To declare the action of the respondents as unjust, arbitrary and illegal; and

(b) To direct the respondents to grant the disability pension 50% and further rounding off the disability pension to 75% in terms of letter dated 31 Jan

2001; and

(c) To grant an interest of 18% on the delayed payment of service element of the disability pension and revision; and

(d) To award exemplary costs upon the Respondents in the facts and circumstances of the record; and

(e) Such further order or orders, direction/directions be passed so as to this Learned Tribunal may deem fit and proper in accordance with law,

3. Learned Counsel for the applicant pleaded that at the time of enrolment/commission, the applicant was found mentally and physically fit for service

in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment/commission in

Army. The diseases of the applicant were contracted during the service, hence both the diseases are attributable to and aggravated by Military

Service. However, the RMB has opined that first disease i.e. 'PIVD L4L5 OPTD (722)' as aggravated by military service and second disease i.e.

'CARDIAC ARRHYTHEMIA VPCs (427) as NANA. The act of overruling/not granting the recommendations of RMB by higher competent

authority was wrong and should be set aside. He further submitted that in similar cases, Honible Apex Court and various Benches of the Armed

Forces Tribunals have granted disability pension, as such the applicant is entitled to disability pension @50% and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that first disability of the applicant i.e. 'PIVD L4L5 OPTD (722)' has been regarded

as 30% for two years by RMB as aggravated by military service and the second disability i.e. 'CARDIAC ARRHYTHEMIA VPCs (427) has been

regarded as 20% for two years by RMB as NANA. However, Army Headquarters is not granting the claim of the applicant for disability pension on

the ground that as per provision contained in Para 50 of the Pension Regulation for the Army 1961 (Part "I) an officer who retires voluntarily shall

not be eligible for an award on account of any disability. Since the applicant has retired prematurely from service on 31.05.1997, hence, he is not

eligible for disability pension. He pleaded for dismissal of the O.A.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the RMB proceedings. The only

question which needs to be answered is whether the Army Headquarters has power to overrule the opinion of the RMB for the first disability?

6. This is a case where the RMB had conceded the first disease i.e. 'PIVD L4L5 OPTD (722)' @30% for two years of the applicant as aggravated

by Military Service. However, with regard to second disease i.e. 'CARDIAC ARRHYTHEMIA VPCs (427)' @20% for two years opined as

NANA. The Army Headquarters had not granted the claim of the applicant for disability pension as per provision as applicable before VI C.P.C. i.e.

01.01.2006 contained in Para 50 of the Pension Regulation for the Army 1961 (Part 'I') i.e., an officer who retires voluntarily shall not be eligible for

an award on account of any disability. However, as per the recommendations of VI C.P.C. disability pension is being granted to pre-mature retiree

also w.e.f. 01.01.2006.

7. In view of above, since the RMB has conceded first disability i.e. 'PIVD L4L5 OPTD (722)' @30% for two years as aggravated and the second

disability i.e. 'CARDIAC ARRHYTHEMIA VPCs (427)' @20% for two years as NANA, hence, we are in agreement with the opinion of the

RMB and that the applicant is eligible for disability element pension for his first disability i.e. 'PIVD L4L5 OPTD (722)' @30% for two years from

the date of his discharge.

8. Considering all issues involved in this case we agree with the opinion of the RMB that the second disability i.e. 'CARDIAC ARRHYTHEMIA

VPCs (427)' is not connected with service hence NANA.

9. The disability 'PIVD L4L5 OPTD (722)' has been recommended by the Medical Board, in its wisdom, for two years only. Therefore, as per

Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 31.01.2001, para 10, a fresh RSMB for life will have to be conducted by the respondents. In

this connection we are of the opinion that a Medical Board is the best agency to take a call on the duration after which the disease needs review.

Additionally, the opinion of Medical Board and the percentages of disability in the Medical Board have direct correlation with financial benefits

accruing out of a disability, hence, it is important that Medical Board reaches a final opinion. The respect for expertise of a Medical Board has been

clarified by Hon'ble Supreme Court in its judgment dated 03.10.2019 in Civil Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India &

Ors. Decided on 03.10.2019. 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. In view of the above, the Original Application No. 1388 of 2017 deserves to be partly allowed, hence, partly allowed. Since, the applicant's RMB

was valid for two years w.e.f. 31.05.1997 and in view of decision of the Hon'ble Supreme Court in Union of India Vs. Tarsem Singh, reported in 2009

(1) AISU 371 with regard to law of limitation, the applicant is not entitled for the arrears of disability element for the period of two years after

discharge. His further entitlement to disability element will depend on the outcome of RSMB. The respondents are directed to conduct a Re-Survey

Medical Board for the applicant. Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of

this order.

11. No order as to costs.

12. Pending application, if any, also stand disposed of.

Pronounced in the open court on 17th 2020.