

(20) 06 AFT CK 0011

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 789 Of 2018, Miscellaneous Application No. 661 Of 2018

Ranvir Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 17, 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: JP Sharma, VS Kadian, VS Tomar, BN Ashok

Final Decision: Disposed Of

Judgement

MA 661/2018

1. Vide this M.A., the applicant seeks condonation of delay of 11574 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 12008 (8) SCC 6481,

we allow the instant MA and condone the delay of 11574 days in filing the OA.

2. MA No 661 of 2018 stands disposed of accordingly.

OA 789/2018

1. 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:-

(a) Quash and set aside the impugned letter No. HQ/99798/1/691265/DAV/DP/CC dated 27.03.2018. And/or

(b) Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability pension (both disability and service element) including benefit of broad banding to the applicant with effect from the date of his invalidment. And/or

(c) Direct respondents to pay the due arrears of disability pension with interest @12% p.a. from the date of invalided out with all the consequential benefits. And/or

(d) Any other relief which the Hon 'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 22.12.1983 and was invalided out of service wef 01.08.1986 on

having been found medically unfit for further retention in service, having rendered only two years and 212 days of service due to disease ""Diabetes

Mellitus"" which was assessed @40% for two years and considered as neither attributable to nor aggravated by military service (NANA). Disability

pension claim of the applicant was rejected vide order dated 12.08.1987 and the applicant was advised to prefer appeal against the rejection of

disability pension, if he was not satisfied with the outcome of the decision. The applicant did not prefer claim against the rejection of disability pension.

The applicant issued legal notice on 18.02.2018 through his counsel after about 30 years which was also rejected by the respondents vide their letter

dated 27.03.2018. It is in this perspective that this C.A. has been filed.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Indian Air Force 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 the applicant was under stress and strains due to rigors of service conditions which may have led

to occurrence of the disability. 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 pleaded for grant of disability pension to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that this being over 30 years old case, the records have been destroyed. However,

with the limited information available, the IMB has opined the disability as - NANA, hence 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 a decision

can be taken on the attributability or aggravation of disease whose medical documents have been destroyed?

6. Though medical board documents and other service documents have been destroyed, however from the submission of both the parties, it has been

observed that the applicant was enrolled on 22.12.1983 and suffered from the disease 'Diabetes Mellitus' and was invalided out just after rendering

two years and 212 days years of service. The applicant's disability pension claim was rejected and was advised to prefer appeal against the rejection

of disability pension claim but instead he kept quiet and preferred no appeal. The documents of the applicant have been destroyed on expiry of

retention period of 25 years and whatever information is available is that . the applicant's disability was assessed @40% for two years and

considered as NANA.

7. In *C. Jacob Vs. Director of Geology and Mining and another* reported in (2008) 10 SCC 115, the Hon'ble Supreme Court held that "a dead or stale

claim is not permitted to be revived. The person who sleeps over his right is not entitled for any indulgence". Further, Hon'ble High Court of Judicature

at Allahabad vide their order dated 04.08.2004 in Civil Misc. Writ Petition No. 8524 of 2000 - titled *Inderpal Singh Vs. UOI and Others*, had dismissed

the petition holding that the petitioner himself was not interested in pursuing the matter and kept silent for 11 years. Consequently, the appeal filed by

the petitioner was wholly belated and the delay could not be condoned merely because the petitioner woke up after 11 years.

8. In the instant case, the applicant was advised by the respondents vide order dt 12.08.1987 to prefer appeal if he was not satisfied with the rejection

of disability pension and the applicant remained silent and did not prefer the claim, thereby giving rise to an assumption that he was satisfied that he

was not entitled for the disability pension, the disability being NANA. Additionally, the respondents have already destroyed the medical documents in

accordance with the policy on preservation of service documents, hence the opinion of medical board on why the disability was made NANA is not

known and thus, since no opinion on attributability can be overruled without knowing the actual opinion, it may not be possible to apply the principle of

Dharamvir Singh judgement (supra).

9. Additionally, it has been well settled by the Honible Supreme Court that the opinion given by the expert Medical Board 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 evident 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"".

10. In view of the above, we are of the opinion that since we don't have the medical board and its opinion, no decision can be taken in vacuum. Thus,

considering all the issues referred to this case, this case deserves to be dismissed.

It is accordingly dismissed.

11. No order as to costs.

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

Pronounced in the open court on 17th June 2020.