

(20) 06 AFT CK 0022

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 679 Of 2018, Miscellaneous Application No. 541 Of 2018

Rakesh Kumar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 17, 0020

Acts Referred:

- Armed Forces Tribunal Act, 2007 - Section 14
- Army Rules, 1954 - Rule 13(iii)

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

Bench: Division Bench

Advocate: Praveen Kumar, Y.P. Singh

Final Decision: Dismissed

Judgement

M.A. No. 541/2018

1. Vide this M.A., the applicant seeks condonation of delay of 1107 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 648], we

allow the instant M.A. and condone the delay of 1107 days in filing the OA.

M.A. No. 541 of 2018 stands disposed of accordingly.

O.A. 679/2018

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 dated 21 May 2015 and 27 Sep 2016.

(b) Direct Respondents to grant disability pension @ 50% after rounding off from 20% for life as recommended by RMB to the applicant with effect

from 01 Mar 2015 i.e. the date of discharge from service with interest @ 12% p.a. till final payment is made.

(c) Any other relief which the Hon 'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. The brief facts of the case are that the applicant was enrolled in the Indian Army on 26.02.1993 and was discharged from service w.e.f.

01.03.2015 (FN) after rendering about 22 years of service in terms of Rule 13 (3) III (iii) of Army Rules 1954. At the time of discharge he was in low

medical category for the disability 'Chronic Pancreatitis (optd) with spleneetomy'. The Release Medical Board (RMB) has assessed the disability @

20% for life neither attributable to nor aggravated by military service. Disability pension claim and first appeal were rejected. It is in this perspective

that this O.A. has been filed.

3. Learned counsel for the applicant pleaded that at the time I when the applicant joined the Army, he was medically examined and found to be in

SHAPE-I and the aforesaid disabilities were contracted after about 15 years of service which resulted in the downgrading of his medical category.

The rejection of the claim of the applicant is illegal, therefore, opining the aforesaid disability as neither attributable to nor aggravated by military

service cannot be justified. Learned counsel also contended that the case of the applicant is squarely covered by the decision of the Hon'ble Supreme

Court in Dharamvir Singh V. Union of India and Others, (2013) 7 SCC 316 and, therefore, the applicant is entitled to disability pension.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant has been regarded as NANA by the RMB hence he is

not entitled to disability pension. He further submitted that in the instant case onset of disability was in February 2008 while serving at Delhi and the

disability is primarily due to excess consumption of alcohol. 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 and rejection order of

the First Appeal. The question before us is simple and straight i.e.-is the disability of applicant attributable to or aggravated by military service?

6. This is a case where the applicant was discharged in low medical category after completion of terms of engagement. He is in receipt of service

pension. We have noted that in the RMB records, the opinion of Lt Col R Saranga, GI Surgeon, Command Hospital, Southern Command shows that

on account of consumption of liquor applicant's liver was found to be fatty and that onset of this disability was due to alcohol binge.

7. In this background we have tried to understand this disease. The Medical Literature on this subject is very clear that stoppage of alcoholic

consumption prevents further damage to pancreas and all medical evidence points to excess alcohol consumption/alcohol binge by the applicant.

8. In view of the above we are of the opinion that the benefit of doubt for this disease cannot go in favour of the applicant and we agree with the

opinion of RMB that the disease is neither attributable to nor aggravated by military service.

9. Thus in the facts and circumstances of the case, we have no valid grounds to interfere with the opinion of the RMB declaring the disability of

applicant as NANA.

10. Additionally, as per Hon'ble Supreme Court judgment in Civil Appeal No 1837/2009 decided on 23.05.2012 in Union of India & Another vs. Ex

Rfn Ravinder Kumar,, it has been held that :-

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"".

11. The above judgment has also been fortified by the Hon'ble Supreme Court judgment in the case of Civil Appeal No 7672 of 2019 decided on

03.10.2019, Ex Cfn Narsingh Yadav vs Union of India & Ors.

12. In view of the above, the O.A. has no merit and it is accordingly dismissed with no order as to costs.

Pending applications, if any, are disposed of accordingly.

Pronounced in the open court on 17th June 2020.