

(20) 06 AFT CK 0032

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 1243 Of 2018, Miscellaneous Application No. 1180 Of 2018

KC Kalra

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: V.S. Kadian, Rarunvir Singh Khehar, P.S. Bindra

Final Decision: Disposed Of

Judgement

M.A. No. 1180/2018

1. Vide this M.A., the applicant seeks condonation of delay of 8695 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 8695 days in filing the O.A.

M.A. No. 1180 of 2018 stands disposed of accordingly.

O.A. No. 1243/2018

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 Air HQ/99798/5/TBS/ Appeal/ AV-III dated 30.05.2018, and/or

(b) Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability

element of pension, and benefit of broad banding from @ 20% to 50%, and/or

(c) Direct respondents to pay the due arrears of disability pension with interest @ 12% p.a. from the date of retirement with all the

consequential benefits.

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

2. Briefly stated facts of the case are that the applicant was enrolled in Indian Air Force (IAF) on 03.09.1979 and was invalided out of service on

30.09.1994 in Low Medical Category for disability 'Essential Hypertension'. The Invaliding Medical Board (IMB) had assessed the disability @ 20%

for two years neither attributable to nor aggravated (NANA) by military service. The applicant's disability pension claim was rejected and first appeal

is pending. It is in this perspective that the applicant has preferred the present Original Application.

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

and there is no note in the service documents that he was suffering from any disease at the time of enrolment in IAF. The disease of the applicant

was contracted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces

Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof.

4. On the other hand, Ld. Counsel for the respondents contended that disability 'Primary Hypertension' of the applicant has been opined by the IMB to

be NANA as it is a constitutional disease having no connection with service. He pleaded for dismissal of the Original Application.

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

6. Having heard learned counsel on both sides, we are of the view that the case on hand is squarely covered by the decisions of Hon'ble Apex Court

in the case of Dharamvir Singh Vs. Union of India and Ors, (2013) 7 SCC 316. In this case the Hon'ble Supreme Court held that any disability

sustained during the course of Military Service will be attributed to service conditions unless the disability was such that the disease could not have been detected on medical examination before a person is selected for Defence Service and furthermore before arriving at a conclusion the Release Medical Board should have assigned reasons, in writing, that the disability was not due to Military Service. There is no dispute with regard to the fact that when the applicant entered into service, he was not suffering from any disease and that the disability in question was detected/sustained only during the course of his Military Service.

7. The matter for implementation of orders of the Hon'ble Supreme Court in the matter of Dharamvir Singh (supra) in respect of Armed Forces

Personnel in NANA cases was taken up with the Department of Expenditure, Ministry of Finance for consideration. Accordingly, Ministry of

Defence by their letter dated 29th June, 2017 sent to the Chief of Staff of Army, Navy and Air Force for implementation of the orders of Hon'ble

Supreme Court, has laid down the following essential parameters for allowing disability pension:

I. The question whether a disability is attributable or aggravated by military service is to be determined under "Entitlement Rules for

Casualty Pensionary Awards 1982.

II. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of

entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be

presumed due to service.

III. If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has laid to an

individual's discharge or death will be deemed to have arisen in the service.

IV. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and

that disease will not be deemed to have arisen during service, the medical board is required to state the reasons.

8. Thus, in the light of the preceding paragraphs and essential parameters given aforesaid, we hereby set aside the impugned order rejecting the claim

of the applicant for disability pension and hold that he is entitled to disability element of pension from the date of his retirement at the rate of 20% for two years.

9. As far as the benefit of Broad Banding is concerned, since benefit of broad banding has been extended w.e.f. 01.01.1996 and the applicant had retired in the year 1994, hence, prima facie the applicant is not entitled to the benefit of broad banding for period in question i.e. two years from the date of retirement.

10. The disability 'Essential Hypertension' has been recommended by the Medical Board, in its wisdom, for two years only. Therefore, as per para 10 of Ministry of Defence letter dated 07.02.2001 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.

11. Resultantly, the O.A is partly allowed. The impugned order is set aside. The applicant's disability 'Essential Hypertension' is to be considered as aggravated by military service. The applicant is entitled to disability element of disability pension @ 20% for two years from the date of his discharge from service. However, the applicant has approached this Tribunal after a huge delay, hence, due to law of limitations settled by the Hon'ble Supreme Court in the case of Union of India vs. Tarsem Singh reported in 2009 (1) AISLJ 371, the arrears of disability element will be restricted to three years

before the date of filing of the instant O.A. The date of filing of this O.A is 12.07.2018. Thus, in sum and substance, the applicant will not be entitled to any arrears on his disability element for the period of two years after his discharge. The applicant is already in receipt of service element for life. The respondents are directed to conduct a Re-Survey Medical Board (RSMB) for the applicant and his future entitlement to disability element will depend upon the outcome of the RSMB. Respondents are directed to give effect to this order within four months from the date of receipt of a certified copy of this order.

No order as to costs.

Pending applications, if any, are disposed of accordingly.

Pronounced in the open court on 19th June 2020.