(20) 06 AFT CK 0034

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 918 Of 2018, Miscellaneous Application No. 784 Of 2018

Hari Bandhu Sahu		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, Shyam Narayan

Final Decision: Dismissed

Judgement

MA 784/2018

1. Vide this M.A., the applicant seeks condonation of delay of 3585 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 MA and condone the delay of 3585 days in filing the OA.

MA No 784 of 2018 stands disposed of accordingly.

OA 918/2018

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 cmd set aside the impugned order No 1(433)/2007/D (D/Pen/Appeal) dated 10.06.2008. 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 ofp

ension, and benefit of rounding off to 100%.

(c) Direct respondents to grant Constant Attendant Allowance to the applicant. And/or

(d) Direct respondents to pay the due arrears of disability element and Constant Attendant Allowance with interest @ 12% p.a from the date of

invalidment with all the consequential benefits.

(e) 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 Army on 07.01.1987 and was invalided out of service on 05.02.2004 in low

medical category due to disability `Maculopathy Both Eye H-35', having rendered 17 years and one month of service. The Invaliding Medical Board

(IMB) of the applicant was held on 07.01.2004 at 159 MH which had assessed his disability, Maculopathy Both Eye H-35' @ 90% for life and

considered as neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected by the

competent authority vide order dated 10/06/2008. 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 Army 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 submitted that for the purpose of determining attributability of the

disease to military service, what is material is whether the disability was detected at the time of enrolment and if no disability was detected at that

time, then it is to be presumed that the disability arose while in service, therefore, the disability of the applicant is to be considered attributable to or

aggravated by service and he is entitled to get disability pension @90% and the same is to be broad banded to 100%. The Ld. Counsel for the

applicant pleaded for grant of disability pension to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that since the IMB has opined the disability as NANA, the applicant is not entitled to

disability pension. He further accentuated that the applicant is not entitled to disability pension in terms of Rule 173 of Pensions Regulations for the

Army 1961 (Part-I) which stipulates that, ""unless otherwise specifically provided, a disabilit y pension may be granted to an individual who is invalided

out of service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over but in the instant case

the disability of the applicant has been assessed at 90% for life and considered as NANA, being degenerative and not influenced by service, therefore

the applicant is not entitled to disability pension. Moreover, the first and second appeals preferred by the applicant have also been rejected by the

competent authorities on the ground that the disability being degenerative in nature as also there being no history of trauma or infections, the same is

not connected to service. He pleaded the 0.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 the disability

of the applicant is attributable to or aggravated by military service?

6. On careful perusal of the medical documents, it has been observed that the applicant was enrolled on 07.01.1987 and the disease 'Maculopathy

Both Eye H- 35' had first started on 30.01.1995 i.e. just after rendering 8 years of service. Medical literature on the disability states that any

pathologic condition or disease of the macula, the small spot in the retina where vision is keenest is maculopathy. It is characterised by a progressive

loss of central vision, usually bilateral, that greatly impairs vision functions. In any case, degenerative maculopathy never leads to complete blindness

since latereral vision is usually preserved till the terminal phases of retinal maculopathy. The macular degeneration is related to the patient's age.

Moreover, the applicant suffered from the disability within eight years of service and there is no history of trauma or infection throughout service of

the applicant, where benefit of doubt could be extended to the applicant. In view of the above, it can be concluded that the disability is degenerative

and has no connection with the military service. Hence, in this case we have no valid reasons to interfere with the opinion of the medical board.

Applicant is in receipt of service pension.

7. It has been well settled by the Hon'ble 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, tilted 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"".

8. Additionally, in Civil Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India & Ors it has â€¢ again been held by the Hon'ble

Supreme Court that certain disorders cannot be detected at the time of recruitment and their subsequent manifestation does not entitle a person for

disability pension unless there are very valid reasons and strong medical evidence to dispute the opinion of Medical Board. 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.

9. In the instant case, the applicant suffered disability `Maculopathy Both Eye H-35' within eight years of joining the Army. Moreover, this disability is

degenerative in nature and no history of trauma or infection found recorded in the medical documents, therefore the disability has no casual connection

with the service.

10. In view of the above, we are of the opinion that we have no valid reasons to interfere with the opinion of IMB, hence we agree with the opinion of

the IMB declaring the disease as NANA. The O.A. is, therefore, devoid of merit and 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.