

(20) 06 AFT CK 0040

Armed Forces Tribunal Principal Bench, New Delhi**Case No:** Original Application No. 937 Of 2018, Miscellaneous Application No. 815 Of 2018

Rambir Singh Tomar

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 19, 0020**Hon'ble Judges:** Sunita Gupta, J; B.B.P. Sinha, Member (A)**Bench:** Division Bench**Advocate:** Pallavi Awasthi, Anil Gauam, R.S. Chhillar**Final Decision:** Disposed Of

Judgement

MA 815 OF 2018

1. For the reasons carved out in the application, the delay of 8160 days in filing the Original Application is condoned. The MA stands disposed of.

OA 937 OF 2018

The applicant, Ex. L/Hay. Rannbir Singh Tomar, through the medium of the instant Original Application is seeking the following reliefs:

(a) To direct the respondents to call for the records in respect of applicant.

(b) To direct the respondents to grant the disability pension @50% alongwith the benefit of rounding off to the applicant from the date of discharge in

terms of law settled by Hon'ble Supreme Court of India as well as by this Hon'ble Tribunal in a catena of judgments.

(c) To direct the respondents to pay the due arrears of disability pension alongwith the benefit of broad-banding with interest @18% p.a. from the

date of discharge i.e. 01.01.1996 with all the consequential benefits.

(d) To pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

2. Briefly stated facts of the case are that the applicant was enrolled in Indian Army on 10.10.1979 and was discharged on 31.12.1995 in Low

Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held on 17.11.1995 assessed his disability 'STRESS

REACTION FOR RMB 308, V67', @40% for two years but opined the disability to be neither attributable to nor aggravated (NANA) by military

service and due to domestic stress. The initial claim of disability pension was rejected by the respondents vide letter dated 21.12.1996. The applicant

sent Legal Notice to the respondents which was rejected vide their letter dated 23.10.2017. It is in this perspective that the applicant has preferred the

present O.A.

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 Indian

Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. 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 element as well as arrears thereof.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant 'STRESS REACTION FOR RMB 308, V67' has been

regarded as @20 for two years by RMB. Since the disability were opined by RMB to be neither attributable to nor aggravated by military service his

claim for grant of disability pension has rightly been rejected. 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 Release Medical Board

proceedings. The only question which needs to be answered is straight and simple i.e. whether the disabilities of applicant are attributable to or

aggravated by military service?

6. On going through the records we find that the applicant wanted to leave service and had requested his C.O. on 04.08.1994, which was turned down

by him. Thereafter he developed 'STRESS REACTION'. Lt. Col. M.B. Pethe, AC Classified Specialist (Psychiatry) of Command Hospital (Central

Command), Lucknow in para 2 and 3 of his reported dated 21.09.1994 as opined as under:-

On admission in this hospital he complained of generalise headache of 2 days duration. Detailed history revealed that he has faced

various domestic and personal problems during last 2 years. As a result he failed in promotion exam and was wanting to leave the service.

His request for release was turned down by his CO following which he had developed abnormal behaviour. He recovered from it but is

having severe headache since then. He has no other complaints.

General physical & systemic exam was within normal limit (WM.). Mental status exam revealed no evidence of psychosis or of depression.

He was found to be anxious, tense and worried. He as lacking in self confidence and his sleep was disturbed

7. We have noted that the applicant has developed this mental disorder i.e. 'STRESS REACTION' in his 14th year of service. We have also noticed

that besides other factors not being able to pass his service exam required for promotion was also a stress factor for the applicant.

8. Thus in this background we have noticed that his disease has been declared as NANA on the ground that 'not connected with service', Domestic

Stress'. We are of the opinion that this reason given by RMB does not indicate the full truth and hence benefit of doubt must be given to the applicant.

Therefore, we are of the view that his disability is to be considered as 'aggravated' by military service in line with the Judgment of Hon'ble Supreme

Court in the case of Dharamvir Singh Versus Union of India & Others, reported in (2013) 7 Supreme Court Cases 316.

9. However, since his RMB was valid for 02 years only, hence, the respondents will have to conduct an RSMB again on him in line with Para 10 of

Government letter dated 07.02.2001 on conduct of Medical Board.

10. Resultantly, the O.A. No. 937 of 2018 is partly allowed. The applicant's disability 'STRESS REACTION' 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) AISL1 371, 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 for the applicant in terms of Para 10 of Government Letter dated 07.02.2001 on conduct of Medical Board 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 copy of this order.

11. No order as to costs.

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

Pronounced in the open court on 19th June 2020.