

(20) 06 AFT CK 0043

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 593 Of 2017

Rattan Singh

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: S.S. Pandey, V.S. Mahandiyan

Final Decision: Disposed Of

Judgement

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) Call for the records based on which the Respondents have denied the benefit of war injury pension and he has been granted only disability pension

as well as he has been denied the interest on broad banding of disability pension and thereafter quash the same to that extent.

(b) Direct the Respondents to grant the Applicant war injury pension after treating his disability as battle casualty and grant him war injury element in

place of disability element as granted to him from the due date with further directions to pay the applicant arrears of war injury element of pension by

extending the benefit of broad banding @ 50 percent.

(c) Direct the respondents to revise the service element of war injury pension by giving him the weightage of service till his age of retirement as

applicable for war injury cases and revise the service element of pension accordingly and grant him arrears with interest from the date it was due till

date of payment.

(d) Issue any other orders as this Hon 'ble Tribunal may deem fit in the facts of the case.

2. The brief facts of the case giving rise to the present Original Application are that the applicant was enrolled in the Indian Army on 27.09.1963 and

discharged due to low medical category on 18.03.1976 after about 12 years of service. The RMB opined his disability PERCEPTIVE DEAFNESS

BOTH EARS @30% for two years to be attributable to military service. Thereafter, the applicant was granted disability pension and after periodical

survey medical board his disability was finally adjudicated by RSMB conducted in 2004 @ 20% for life. The applicant has also been granted the

benefit of rounding off to 50% for life w.e.f. 01.07.2009. The applicant is in receipt of 50% disability pension for the disability 'Perceptive Deafness

Both Ears 359' as brought out in the Release Medical Board (RMB) dated 27.11.1975 (Annexure A-2 to the O.A.). The applicant is claiming war

injury pension instead of disability pension. Hence this O.A.

3. Ld. Counsel for the applicant pleaded that the applicant was a GUNNER in the Regiment of Artillery and he suffered deafness in both ears due to

continuous exposure to the loud noise of Artillery fire in 1971 war. He submitted that the disability of the applicant occurred during 1971 Indo-Pak

War, therefore he is entitled to war injury pension in place of disability pension as per Govt letter on the subject dated 31.01.2001. He concluded by

pleading for war injury pension and its broad banding for the applicant.

4. On the other hand, Ld. Counsel for the respondents contended that the applicant is not entitled to war injury pension in terms para 10.1 read in

conjunction with para 4.1 (war injury category) of Government of India letter dated 31.01.2001 wherein it has been mentioned that only personnel who

were invalided out on or after 01.01.1996 on account of disability sustained under war like situations are only entitled to war injury pension. He

pleaded that since the applicant has been invalided out in 1976, hence he is not entitled for war injury pension. He pleaded dismissal of the O.A.

5. We have heard Ld. Counsel for the parties and perused the records.

6. This is a case where an Army soldier (a Gunner of Artillery Regiment) had taken active part in 1971 Indo-Pak War and suffered disability during the war. We have noted that after the war was over the applicant was found to be suffering from Perceptive Deafness Both Ears 359 and on account of this disability he was discharged from service due to low medical category, i.e., Category CEE (P) after about 12 years of service. In this regard we have perused the records in detail and noted the opinion expressed by Maj VM Thakur, Graded Specialist (ENT) of Military Hospital, Jodhpur in which it has been clearly indicated that the origin of disease is on 11.12.1971, i.e., during 1971 war. Thus it is clear to us that the applicant's disability is directly related to 1971 Indo-Pak War. For convenience sake the aforesaid opinion is as under:-

This is an old case of Bilateral perceptive deafness in medical category CEE (C) permanent wef 15 Jul 74. He has now reported for opinion for release medical board. At present he still complains of diminution of hearing from both the ears since 1971. He gives H/O exposure to loud noises during 1971 war. On examination both tympanic membranes are intact and mobile. Hearing right ear 30 cm W, Left ear 100 cm W both ears 100 cm W. Tuning fork tests reveal severe perceptive deafness both ears. Nose and throat NAB.

7. From the aforesaid opinion of the specialist medical officer and material available on record it is clear to us that the disability suffered by the applicant as a gunner in Artillery Regiment during 1971 Indo-Pak War is a war injury due to loud noise of Artillery fire during the war. Hence he is entitled to receive war injury pension as per the Govt. Policy letter on the subject dated 31.01.2001. In this context we would like to clarify that the benefits conferred by the above quoted Govt. Policy letter will also be extended to the applicant in the light of the Hon'ble Supreme Court judgment of D.S. Nakara and Ors. Vs. Union of India [(1983) 1 SCC 305]. Additionally the applicant shall be entitled for the benefits of broad banding from 20% to 50% of war injury element for life from 1996.

8. This Tribunal in a symmetrical background as that of the applicant has allowed T.A. No. 130.2009 on 26.10.2009 in the case of CB Khanduri vs

Union of India & Ors. In this case the applicant was in receipt of disability pension and had pleaded for war injury pension which on adjudication was granted.

9. In view of the above we allow this petition and direct the respondents to grant war injury pension to 3 April, 2017. The respondents are further directed to implement this order within four months from 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.