

(20) 06 AFT CK 0044

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 1302 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

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

Bench: Division Bench

Advocate: Ved Prakash, V.S. Tomar

Final Decision: Disposed Of

Judgement

1. Being aggrieved by denial of service element, 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) Direct the respondents to grant disability pension including service element w.e.f the date of release of the applicant with all consequential benefits.

(b) Direct the respondents to pay arrears with interest @12% from their retirement with all consequential benefits.

(c) To pass any such other orders/directions as the Hon'ble Tribunal may deem fit in the circumstances of the present case.

(d) Cost of this OA may be provided of

2. Brief facts of the case are that the applicant was enrolled in the Indian Navy on 05.08.2000 and was discharged from service w.e.f. 31.08.2010 due

to 'Generalized Seizure ICD No G 40.4 Z 09.0'. The medical Board has assessed his disability @ 20% for life and conceded it as aggravated by military service. The applicant is presently receiving only disability element of disability pension and he has not been granted service element of disability pension. On account of non receipt of service element, a legal notice was served to the respondents on 28.11.2017. It is in this perspective that this O.A. has been filed.

4. On the other hand, Ld. Counsel for the respondents submitted that the applicant was discharged from service and not invalided out of service therefore he is not entitled to receive service element. Ld. Counsel for the respondents further submitted that Entitlement Rules, 1982 and para 101 of Pension Regulations for the Navy 1964 do not entitle the applicant to receive service element as he was discharged from service before completing 15 years i.e. minimum pensionable service. He pleaded the O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. Following facts about this case are clear to us:-

(a) That the applicant was discharged from NAVY in low medical category on 31.08.2010 with 10 years of service.

(b) That the Medical Board has assessed his disability @ 20% for life aggravated by military service.

(c) That vide PPO dated 04.02.2013 the applicant is in receipt of disability element.

(d) Now the applicant has filed this O.A. for grant of service element and respondents have not filed a clear reply as to why they have restricted the applicant to receive only disability element when the disability was aggravated by military service and he was discharged from service after completion of 10 years of service.

7. It is not disputed that the payment of disability pension (service element and disability element) is governed by The Navy (Pension) Regulations, 1964 which envisages that in case the disability of an incumbent is either attributable to or aggravated by military service, the individual shall be entitled to disability pension.

8. In this context we have gone into the judgment in the case of Prayag Singh Parihar, vs Union of India & Ors, T.A. No. 93 of 201.0 decided on

06.04.2016 by Co-ordinate Bench of this Tribunal (Lucknow Bench) and found that the Tribunal has allowed a similar case and directed the

respondents to pay the service element with arrears from the date of discharge along with 10% interest.

9. Further in a similar case, the Honible Supreme Court has upheld Regional Bench, Kochi judgment dated 26.10.2010 and 12.04.2011 in Civil Appeal

No 4714-4715 of 2012 (decided on 07.11.2019), Union of India & Ors vs V.R. Nanukuttan Nair, operative portion of which is as under:-

21. The quantification of pension in the cases of an individual, completed qualification service is disability who has not dealt with in Regulation 107.

Sub-clause (a) of Clause (1) of Regulation 107 deals with the situation where the individual has rendered sufficient service to qualify for a service

pension i.e. 15 years of service in terms of Regulation 78. However, sub-clause (b) comes into play where the individual has not rendered sufficient

service to qualify for service pension. In cases where the disability was suffered while flying or parachute jumping, the minimum service pension is

appropriate to his last rank and group but in all other cases, the service pension is restricted to minimum of two-thirds of the minimum service pension.

For such reason, the disability element would be in addition to the service pension by cumulative reading of Regulation 78, Regulation 105B and

Regulation 107 of the Regulations. The service pension is to be assessed on the basis of the minimum service pension laid down for an able individual

of the same group in Regulation 107 of the Regulations.'

10. In view of the above and the ruling set out on admissibility of service pension by the Hon'ble Supreme Court judgment dated 07.11.2019 (supra)

the O.A. is allowed. The impugned orders are set aside. In addition to disability element, the applicant shall be entitled to receive his due service

element w.e.f. his date of discharge i.e. 31.08.2010. However, the applicant has approached this Tribunal after a huge delay. Hence due to law of

limitation settled by Honble Supreme Court in the case of Union of India and Ors. Vs.Tarsem Singh [(2008) 8 SCC 648] the arrears of service lement

will be restricted to three years before filing this OA. The date of filing this OA is 23.07.2018. This order is to be implement within four months from receipt of a copy of this order. Default will invite interest @ 6% p.a.

No order as to costs.

Pending applications, if any, are disposed of accordingly.

Pronounced in the open court on 17th June 2020.