

(20) 06 AFT CK 0045

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 1400 Of 2018, Miscellaneous Application No. 1406 Of 2018

Madan Singh

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: V.S. Kadian, J.S. Rawat

Final Decision: Dismissed

Judgement

M.A. No. 1406/2018

1. Vide this M.A., the applicant seeks condonation of delay of 23 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 23 days in filing the O.A.

M.A. No. 1406 of 2018 stands disposed of accordingly.

O.A. No. 1400/2018

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) Impugned communication/order dated 09.04.2018 & 06.03.2017 be set aside passed by the respondents to the extent this order deny the grant of

disability element pension to the applicant as neither attributable to nor aggravated by military service (NANA).

(b) To direct the respondents to grant the disability pension alongwith arrears with interest @ 18% p.a. with effect from the date of retirement with all

the consequential benefits to the applicant by treating the same as attributable to and aggravated by military service @ 70%.

(c) to direct the respondents to grant the benefit of rounding of disability of the applicant @ 75% for life in terms of law settled by Hon 'ble Supreme

Court of India in Civil Appeal No 418/2012 titled as UOI & Ors vs. Ram Avtar vide judgment dated 10.12.2014 as well as in a catena of judgments by

this Hon 'ble Tribunal.

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

3. Learned counsel for the applicant pointed out that at the time when the applicant joined the Army, he was medically examined and found to be in

SHAPE and the aforesaid disability occurred while in service which resulted in the downgradation of his medical category. Ld. Counsel for the

applicant further submitted that the IMB has declared the disability as attributable to military service hence he is entitled to disability pension. Learned

counsel also contended that the case of the applicant is squarely covered by the decision of the Hon'ble Supreme Court in Dharamvir Singh v. Union

of India and Others, (2013) 7 SCC 316 and, therefore, the applicant is entitled to disability pension.

4. On the other hand, Ld. Counsel for the respondents though conceded that burn injury of the applicant was accepted as attributable to military

service by IMB based on C of I report but submitted that since the competent authority has rejected claim of the applicant as NANA therefore he is

not entitled to disability pension. 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 IMB proceedings and

findings of the Court of Inquiry (C of I) Proceedings.

6. On scrutiny of the documents we have found that the applicant's disability has been declared as attributable to military service by the duly

constituted C of I which was conducted after the incident. The C of I had given its opinion as under:-

OPINION OF THE COURT

(a) No 14539140F Nk/Elect BD Shankar sustained injury while preparing tea in the family quarter and individual is not to be blamed for the injury.

(b) Injury sustained by No. 14539140F Nk/Elect (Now Nk) BD Shankar is attributable to military service.

7. This is a case of injury by burns received while making tea at home. The attributability in injury cases is to be decided by the Court of Inquiry (C of I).

We have found this is a case where the C of I has recommended attributability but not given detailed reasons for the same. 8. We have gone through

the C of I in detail and we have noticed that in this case the C of I has recommended the burn injury to be attributable to Military Service. However,

mainly because the C of I has not given detailed reasons to justify attributability, therefore apparently attributability has been denied to the applicant by

the Competent Authority. In view of the aforesaid, we are of the opinion that C of I is the best authority to decide attributability and if the Competent

Authority was not happy about the way C of I has been done, they could have reconvened it. However, considering all the issues involved in this case,

we are inclined to give benefit of doubt to the applicant and consider his injury as attributable in line with the recommendations of C of I. Hence, the

applicant is entitled to disability pension.

10. In view of the above, the O.A. is allowed. The applicant is already in receipt of service element for life. His disability 'Burns 40% (N-995, E-883)'

@ 50% for five years is to be considered as attributable to military service in line with the recommendations of IMB and C of I. However, the

applicant has approached this Tribunal after a huge delay of 26 years, hence due to law of limitation as settled by Hon'ble Supreme Court in the case

of Union of India and Ors. Vs. Tarsem Singh [(2008) 8 SCC 648] he shall not be entitled to arrears of disability element for the five years period, his

RMB is valid after discharge. Since his RMB, as per medical opinion, was valid only for five years after discharge, therefore, he will have to undergo

a fresh RSMB for life as per para 10 of the extant policy letter dated 07.02.2001. His further entitlement of disability element will depend on the

outcome of the RSMB, which has to be undertaken by the respondents. This order is to be implemented within four months after receipt of a 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.