
(2020) 03 AFT CK 0027

In the Armed Forces Tribunal

Case No : Original Application No. 1375 Of 2018, Miscellaneous Application No. 1367 Of 2018

A.K. Patel

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 05-03-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 31, 14

Citation : (2020) 03 AFT CK 0027

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

Bench : Division Bench

Advocate : Kirtika Chhatwal, I.S. Singh, Satya Ranjan Swain

Final Decision : Dismissed

Judgement

1. Vide separate order pronounced today, OA stands dismissed.

Proxy counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007.

However, she has not been able point out any substantial question of law of general public importance involved in the order, which warrants grant of

leave to appeal. As such, prayer made by the proxy counsel for the applicant is declined.

Vide this M.A., the applicant seeks condonation of delay of 69 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 12008 (8) SCC 6481, we allow the

instant MA and condone the delay of 69 days in filing the OA,

2. MA No 1367 of 2018 stands disposed of accordingly.

OA 1375 of 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) Set aside the impugned order dated 14.11.2017 passed by the Respondents;
- (b) Direct the Respondents to treat the Applicant's remaining three disabilities, namely ""(I) Osteoid Osteoma Rt Tibia-Optd. (ii) Obesity and (iii) Dyslipidemia"" with which he was found suffering by the RMB and with which he continues to suffer till date, as Aggravated by military service,, if not as Attributable to military service;
- (c) Direct the Respondents to fix composite disability of the Applicant's five disabilities @,53% in accordance with the guidelines laid-down in 'Guide to Medical Officers for Military Persons-2008';
- (d) Direct the Respondents to grant disability pension to the Applicant @,75% w.ef the date of his release from the Army service, i.e. 17 Nov 2015 (AN);
- (e) Direct the Respondents to extend the benefit of broad-banding to the Applicant and thereby pay disability pension to the Applicant @75% w.ef 17 Nov 2015 (AN) by rounding off the Applicant's disability from 53% to 75%;
- (f) Direct the Respondents to pay 10% interest on the arrears of disability pension w.ef 17 Nov 2015 (FN); and
- (g) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.

2. Brief facts of the case are that the applicant was commissioned in the Indian Army on 01.09.2001 as Short Service Commissioned Officer and was

discharged from service on 31.08.2015 in low medical category on completion of terms of engagement, having rendered 14 years of service. The

RMB of the applicant was held on 26.06.2015 at INHS, Asvini, Mumbai which had assessed his two disabilities, ie (i) ""Prolapsed Intervertebrae Disc

(LV4-LV5)"" @ 20% and (ii) ""Hyperuricemia"" @ 1-5% considered as Aggravated by military service, and remaining three disabilities, viz., (i) ""Osteoid Osteoma (Rt Tibia, Optd)"" @ 30%, (ii) ""Obesity"" @ 1-5%, (iii) ""Dyslipidemia"" @ 1-5% and were considered as NANA, with overall composite

assessment @ 50% for life and net composite assessment @20% for life for the purpose of disability pension. The Release Medical Board was

forwarded to the administrative authority, ie ADG PS, IHQ of MoD (Army) who accepted the opinion of the medical board and the applicant was

granted disability pension @ 20% for life. The Applicant preferred first appeal for grant of disability pension @ 20% alongwith rounding off benefits

to 50% for the two diseases, viz., "Prolapsed Intervertebrae Disc (LV4-LV5)" and "Hyperuricemia" which was rejected by the competent authority

vide order dt 30.03.2017. Thereafter, the applicant filed second appeal for grant of composite disability @ 53% or 65% for all the five diseases

alongwith rounding off benefits to 75%, which was also rejected by competent authority vide order dt 14.11.2017. It is in this perspective that this

O.A. has been filed.

3. Ld. Counsel for the applicant pleaded that the applicant was commissioned 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 @53% and the same is to be broad banded to 75%. 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

RMB has opined the applicant has already been granted disability element of disability pension @20% for life for two diseases, viz., "Prolapsed Intervertebrae Disc (LV4-LV5)" and "Hyperuricemia", which were considered as aggravated by military service for which he has been granted disability pension @20% for life. However, he is not entitled for disability pension for remaining disabilities as the same were considered as NANA. 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 disability 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 composite disability of the applicant has been assessed at 20% for life for only two diseases viz., "Prolapsed Intervertebrae Disc (LV4-LV5)" and "Hyperuricemia" for which he has been granted disability pension, and the remaining disabilities are considered as NANA, therefore, the applicant is not entitled to disability pension for remaining disabilities. He pleaded the O.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. We find that this is an interesting case, where a Short Service Commissioned Officer is suffering with five disabilities after completion of 14 years of service. Out of these five disabilities, two disabilities, i.e., 'Prolapsed that it occurs when certain cells divide Intervertebrae Disc (LV4-LV5)' and 'Hyperuricemia' were conceded as aggravated by RMB and the applicant is in receipt of disability pension @20%. The basic prayer of the applicant is to make the remaining three disabilities opined as NANA by RMB also as attributable to/ aggravated by military service so that the disability percentage increases to 50% and after benefit of rounding off, he becomes eligible for 75% disability element. When we look at these three remaining diseases, following factual pictures emerge:-

(a) Obesity (1-5%). The respondents have a clear policy and we are in agreement that obesity is linked to personal habits and can't be linked to attributability/aggravation to military service. We agree with the explanations

given by respondents, i.e., "A metabolic disorder correlated with sedentary lifestyle and individual's own dietary indiscretion. It is not related to service factors, hence NANA".

(b) Osteoid Osteoma (Rt Tibia, Optd)" (30%). The respondents have made it amply clear to the applicant in a series of response to his letters and appeal, that this disability is a benign bone tumour and has no service related causative or aggravating factors, hence it is NANA. Medical literature confirms this stand of the respondents, i.e., uncontrollably, forming a small mass of bone and other tissue. This growing tumour replaces healthy bone tissue with abnormal hard bone tissue". It is in this background that RMB has opined this disease as NANA.

(c) Dyslipidemia" (1-5%). This disease refers to unhealthy levels of one or more kinds of lipid (fat) in the blood. In this case also, we agree with the response of respondents that it is a metabolic disorder correlated with sedentary life style and individual's own dietary indiscretion. It is not related to service factors, hence NANA.

7. We have also noted that the applicant had earlier filed an O.A. in this Tribunal, primarily for grant of permanent commission vide OA 424/2015.

However, one of the prayers in this OA was related to grant of attributability, i.e., "Directions requiring the respondents to declare that all the disabilities suffered by the petitioner are attributable to/aggravated by military service in terms of the entitlement Rules, which are part of the Pension Regulations, 1961 as also of Para 520 of the Regulations for the Army in the light of the judgement of the Supreme Court in Dharamvir Singh Vs Union of India (2013) 7 SCC 316." In this judgement the Tribunal has addressed the prayer of the applicant in detail and dismissed his claims for granting attributability to his disabilities. The present OA is for grant of enhanced disability pension, however the issues related to opinion of RMB are same.

8. We have noted that the RMB has conceded two disabilities of the applicant as aggravated which has benefitted the applicant and resulted in disability pension @20% for life which includes service element for life. For the remaining three disabilities as mentioned above, the RMB has declared them as NANA with cogent reasons. Thus considering the complete situation in totality, we are of the opinion that the applicant has no case

and the respondents have been more than fair to him as a short service commissioned officer both in terms of giving him two extensions to complete

14 years service despite severe disability and by granting him disability pension.

9. Additionally, 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, titled 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".

10. In a recent judgement, in Civil Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India & Ors it has again been held by the Hontle

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.

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

of the RMB that two diseases, viz., ""Prolapsed Intervertebrae Disc (LV4-LV5)"" and ""Hyperuricemia"" are aggravated due to military service and the

remaining three diseases, ie. (i) ""Osteoid Ostema (Rt Tibia, Optd)"" (ii) ""Obesity"", and (iii) ""Dyslipidemia"" are NANA.

12. In view of the above, the applicant is already getting disability pension which includes disability element along with service element. Additionally,

he is entitled to the benefit of rounding off of this disability from 20% to 50% for life from the date of discharge, ie., 01.09.2015. However, for the

other three diseases which have been declared as NANA by the RMB, he is not entitled for the disability element.

13. In view of the above, we are of the opinion that the applicant has failed to make out a case for himself and hence, the OA deserves to be

dismissed.

It is accordingly dismissed.

14. No order as to costs.

15. Pending application(s), if any, also stands disposed of.

Pronounced in the open court on 5th March, 2020.