

**(2020) 03 AFT CK 0015**

**In the Armed Forces Tribunal**

**Case No :** Original Application No. 64 Of 2018, Miscellaneous Application No. 43 Of 2018

Arun Mamgain

APPELLANT

Vs

Union Of India And Others

RESPONDENT

**Date of Decision :** 06-03-2020

**Acts Referred:**

Armed Forces Tribunal Act, 2007 — Section 14

**Citation :** (2020) 03 AFT CK 0015

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

**Bench :** Division Bench

**Advocate :** Anil Srivastava, Prabodh Kumar

**Final Decision :** Dismissed

## Judgement

M.A. No. 43/2018

1. Vide this M.A., the applicant seeks condonation of delay of 296 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 296 days in filing the O.A.

M.A. No. 43 of 2018 stands disposed of accordingly.

O.A. No. 64/2018

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) To direct the respondents to grant disability pension and duly broad banding the disability from 20% to 50% alongwith interest @ 8% per annum on

the arrears wef his date of retirement i.e. 01.11.2004.

(b) That the Applicant be awarded reasonable cost of the litigation as deemed just and proper by the Hon'ble Court in the facts and circumstances of the case.

(c) To pass any such other and/or further order or orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice and 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 14.11.1971 and superannuated w.e.f.

31.10.2004 in low medical category '51H1A1P2(P)E1' due to 'Dyslipidemia'. The RMB of the applicant was held on 05.08.2004 at Military Hospital,

Dehradun which had assessed his disability @ 20% for life neither attributable to nor aggravated by military service (NANA). Disability pension claim

was rejected vide order dated 26.08.2016. 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 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. Relying upon Hon'ble Apex Court judgment in the case of Dharamvir Singh Vs. Union of India and Ors (2013) 7 SCC,

the Ld. Counsel pleaded that since the aforementioned judgment covers the present case, therefore the applicant is entitled to be granted disability

pension.

4. On the other hand, Ld. Counsel for the respondents submitted that since the RMB has opined the disability as NANA, the applicant is not entitled to

disability pension. He further submitted 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 disability of the applicant has been assessed at 20% for life and NANA, therefore the applicant is not entitled to disability pension. He pleaded the O.A. to be dismissed.

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

Dyslipidemia is a disorder of lipoprotein metabolism, including lipoprotein overproduction or deficiency. Dyslipidemias may be manifested by elevation of the total cholesterol, the "bad" low-density lipoprotein (LDL) cholesterol and the triglyceride concentrations, and a decrease in the "good" high-density lipoprotein (HDL) cholesterol concentration in the blood. Dyslipidemia comes under consideration in many situations including diabetes, a common cause of hyperlipidemia.

7. Thus keeping in view of above narrative the RMB has opined the disability 'Dyslipidemia' as NANA. On the point of RMB's opinion 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 on 23.12.2012 in Civil Appeal No 1837/2009, titled Union of India & Another vs. Ex Rfn Ravinder Kumar, the Hon'ble Apex Court has stated as 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".

8. Additionally once again in 2019 in the case of Ex CM Narsingh Yadav vs Union of India & Ors, Civil Appeal No 7672 of 2019, the Hon'ble Supreme Court has held that :-

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.

9. In the instant case applicant's disability 'Dyslipidemia' has been assessed by the duly constituted RMB as NANA, and we are of view that we have

no valid grounds to interfere with the opinion of the Medical Board.

10. In view of the above, the OA. is devoid of merit and deserves to be dismissed. It is accordingly dismissed.

No order as to costs.

Pending applications, if any, are disposed of accordingly.

Pronounced in the open court on 6th March. 2020.