

(20) 06 AFT CK 0003

In the Armed Forces Tribunal

Case No : Original Application No. 240 Of 2019, Miscellaneous Application No. 698 Of 2019

Bharat Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 19-06-20

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (20) 06 AFT CK 0003

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

Bench : Division Bench

Advocate : Ved Prakash, Neeraj

Final Decision : Dismissed

Judgement

M.A. No. 698/2019

1. Vide this M.A., the applicant seeks condonation of delay of 160 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 611 days in filing the OA.

M.A. No. 698 of 2019 stands disposed of accordingly.

O.A. No. 240/2019

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). Quash the Impugned order letter No RNE/DP/16015173 dated 22.06.2018.

(b) Direct the respondents to grant disability element of pension to the Applicant

duly rounded off to 50% w.e.f 01.03.2018.

(c) Direct respondents to pay the due arrears of disability element of pension with interest @ 12% p.a. from the date of retirement with all the consequential benefits.

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 29.01.2003 and was discharged from service on 28.02.2018

in low medical category after having served for 15 years. At the time of discharge his Release Medical Board (RMB) was carried out which assessed

his disabilities (i) Primary Hypertension ICD Code No I-10.0 30% for life and (ii) Obesity ICD Code No E-66 1-5% for life neither attributable to nor

aggravated by military service (NANA). The applicant's disability pension claim was rejected vide order dated 22.06.2018. Hence this O.A.

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

SHAPE-I and the aforesaid disabilities were contracted after about 12 years of service which resulted in the downgrading of his medical category.

The rejection of the claim of the applicant is illegal, therefore, opining the aforesaid disability as neither attributable to nor aggravated by military

service cannot be justified. 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. Per contra, the learned counsel for the respondents submitted that the applicant is already in receipt of service pension and the disability 'Primary

Hypertension and obesity' of the applicant had originated in peace area and based on Charter of Duties, the RMB had rightly opined it as NANA.

Hence the applicant is not entitled to disability pension. He pleaded for the O.A to be dismissed.

5. Having heard the learned counsel for the parties and perusal of the records, the question that fall for our consideration is whether the disabilities

'Primary Hypertension and obesity' of the applicant are attributable to or aggravated by military service? 6. On scrutiny we have noted that the

applicant has served for 15 years in the Army and is in receipt of service pension. We have also noted that when a soldier is put in 'OBESITY'

category, it means that he is at least 30 and above to his acceptable Body Mass

Index (BMI). BMI is defined as a person's weight with respect to his height. Obesity also reflects excessive fat accumulation in the body and is known to make a person more vulnerable to various diseases. This also clearly points out that the applicant has been in overweight category i.e. BMI between 25 & 29.9 for long before being declared obese. It also indicates that the applicant has failed to control his obesity from June 2015 till he retired in February 2018. In the above situation we feel that a soldier has special responsibility to keep himself fully fit. Being overweight to the extent of being placed in lower medical category of 'OBESITY' for three years amounts to being negligent towards own health and also amounts to an invitation to life style disease like 'Hypertension', 'Diabetes' and 'heart disease'. On careful perusal of the medical documents and material placed on record, it has been observed that the applicant was detected to be overweight i.e. BMI 25-29.9 during June 2015 but he did not care to reduce his weight by graded exercises and dietary restriction. Despite the above, the applicant was having 91 kgs weight as against 74 kgs ideal weight at the time of his discharge from service. In this situation it is obvious that he suffered with primary hypertension. Simultaneously detection of obesity and hypertension indicate that the applicant failed to reduce his weight through dietary control and exercise till his final retirement in 2018. Thus in these circumstances we are in no position to give any benefit of doubt to the applicant and we agree with the opinion of the RMB that both the diseases of the applicant are NANA.

7. Additionally, this Tribunal while dealing with disability pension in disabilities 'Obesity and Hypertension' in O.A. No. 1656/2019, Ex-HFO Gyanendra

Singh (supra) has dismissed the case on merit which was also upheld by the Hon'ble Supreme Court in Civil Diary No 21017/2019 decided on

08.07.2019.

8. In view of the above, since the applicant's disabilities have been held to be NANA by the RMB with cogent reasons, we are not inclined to

interfere with the opinion of the RMB.

9. Therefore we do not find any merit in the O.A. and accordingly the same is dismissed.

10. No order as to costs.

Pending applications, if any, are disposed of accordingly.

Pronounced in the open court on 19th June 2020