

(2019) 11 AFT CK 0025
In the Armed Forces Tribunal
Case No : Original Application No. 79 Of 2019

Davinder Choudhary

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 27-11-2019

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 21, 22, 22(1)

Citation : (2019) 11 AFT CK 0025

Hon'ble Judges : Sunita Gupta, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : VS Kadian, VS Tomar

Final Decision : Disposed Of

Judgement

1. The short question which arises in present OA is with regard to the period from which the applicant is entitled for grant of disability element of pension.

2. The applicant was commissioned in the Army on 17.03,1977 and retired from service w.e.f. 31.07.2007. At the time of retirement, he was in low medical category. The Release Medical Board held at the time of retirement assessed his disability NASO BRONCHIAL ALLERGY 20% for life but he was not granted disability element of pension on the ground that the disability was neither attributable to nor aggravated by military service.

Feeling aggrieved, he filed OA 342/2017 for grant of disability element of pension along with benefits of broad banding from the date of retirement.

3. The said OA was disposed off with the directions to consider representation dated 12 August 2016 as first appeal and to decide the same by a

speaking order The first Appellate Committee on First Appeal vide letter No. 12681/IC-36904/T-8/MP-5(B)/189/2017/Appeal/AG/PS-4(Imp-11) dated

27.09.2017 considered the disability as aggravated by military service for life and sanctioned disability element of pension with the benefit of broad

banding at 50% for life w.e.f. 12 August 2016 which is alleged to be illegal. It is stated that the applicant's disability was required to be considered

from the date of retirement i.e. 01 August 2007 because he was suffering from this disability while serving in the Army. However, the Army

authorities failed to grant him disability element since the date of retirement and his entitled benefits were withheld illegally without any justification.

Therefore, a Legal Notice cum Representation dated 06.04.2018 was served by the applicant for grant of disability element of pension from the date

of retirement 01.08.2007 to 11.08.2016 which is alleged to have not been replied by the respondents. Hence, the present OA has been filed seeking

disability element of pension w.e.f. date of retirement 01.08.2007 to 11.08.2016 along with interest at 12%.

4. The claim has been resisted by the respondents inter-alia on the ground that initial disability claim was rejected vide AG/PS-4 letter No, 13014/1C-

36904/A-14/MP-6(B)228(2007)/AG/PS-4(Imp-11) dated 3 Dec 2007 holding the disability of the applicant as 'NANA'. Subsequently, the applicant

filed OA No. 342/2017 which was disposed off with the directions to consider the representation dated 12 August 2016 as first appeal. The same was

considered by the Appellate Committee on First Appeal and thereafter the applicant was granted disability element at 50% w.e.f. 12 August 2016 for

life.

5. Respondents have submitted that as per Government of India, MOD Policy letter dated 14 December 2004, in cases of appeal after a long delay

without any specific reason, the arrears of disability pension, if any, should not be paid for the entire period and that it should be reduced to the extent

of delay in filing of the appeal. In view of this Government Policy, the applicant is entitled for grant of disability element from the date of appeal i.e. 12

August 2016 and not from the date of retirement. As such, respondents contend the OA is liable to be dismissed.

6. Heard learned counsel for the parties and perused the records.

7. Learned counsel for the applicant placed reliance on the order passed by Hon'ble Supreme Court in Civil Appeal No. 1'1485 of 2018 Madan Prasad

Sinha Sanatan Baba vs. Union of India & Ors dated 08 April 2019 for submitting

that the applicant is entitled for disability element w.e.f. the date of retirement. On the other hand, learned counsel for the respondents submits that although the applicant retired in the year 2007, however, he himself did not prefer any appeal or made any representation prior to 12 August 2016. Therefore, having remained silent for this entire period, he is not entitled for the benefits during this intervening period.

8. It is the admitted case of the parties that the applicant retired from service on 31 July 2007 on reaching the age of superannuation. At the time of retirement, since the applicant was in low medical category. he was brought before duly constituted Release Medical Board on 16 June 2007 and as per RMB proceedings the disability of the applicant was assessed @ 20% but it was opined that it was neither attributable to nor aggravated by military service. Therefore. his initial disability claim was rejected vide letter dated 03 December 2007.

9. As per Section 22 of the Armed Forces Tribunal Act 2007 (hereinafter referred as "Act"), the period of limitation for filing an application is six months from the date on which final order has been made. However, Sub-Section 2 of this Section provides that the Tribunal may admit an application after the period of six months if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period.

10. Further, Section 21 of the Act provides that the Tribunal shall not admit an application unless the applicant had availed all the remedies available to him under the Army Act and rules & regulations made therein. The remedies available to the applicant are to prefer first appeal within a period of six months from the date of passing of the order and in case the applicant still feels aggrieved, second appeal can also be preferred before the competent authority. Admittedly. the applicant did not make effort to avail of these alternative remedies available to him till 12 August 2016 when a representation was made for grant of disability element of pension. This representation was ordered to be treated as first appeal by the Tribunal when OA No. 342/2017 was filed by the applicant. Thereafter, the relief was granted to the applicant w.e.f. the date of representation.

11. We have carefully gone through the order passed by Hon'ble Supreme Court in Madan Prasad Sinha(Supra), relied upon by the learned counsel for the applicant, where he was granted benefit of disability pension for the

intervening period when he was disallowed disability element of pension.

With due respect, the factual scenario appearing in that case was different as the applicant, who had joined the Corps of Signals on 18 February 1971

and discharged from military service on 18 August 1981, on account of being placed in medical category was found to be suffering from disability

Chronic Duodenal Ulcer"" and Re-survey Medical Board submitted a chart reflecting that from 1985 till 1995 the applicant was being granted disability

pension. It was in the year 1995 when PCDA, Allahabad reassessed disability at less than 20@ that the same was stopped thereafter. Subsequently,

w.e.f. 30 January 2014, disability pension was again granted to the applicant. Under these circumstances, Honble Supreme Court observed that denial

of the disability pension to the appellant for the intervening period was misconceived and he was granted said benefit.

12. In the instant case, after his retirement from service in the year 2007, his initial claim was rejected by the competent authority on the ground that

disability was ""NANA'. The applicant remained silent till the year 2016 and despite the fact that he had the remedies available to him by filing first

appeal and second appeal, he chose not to avail those remedies and preferred a representation only in the year 2016. Although as per Section 22 (1) of

the Act, the limitation for filing such an application was only six months, however, in view of sub-section (2). the application could have been

entertained. Moreover, the delay aspect was considered by Hon'ble Supreme Court in Union of India Vs. Tarsem Singh 2008(2) SCC (LNS) 76,5

which was also a case where the respondent was invalidated out of Army service in the year 1983. He approached the High Court in 1999 seeking

directions for grant of disability pension. The Writ Petition was allowed and the respondents were directed to grant him disability pension. However,

the arrears were granted for a period of 38 months prior to the filing of Writ Petition. The respondents feeling dis-satisfied, preferred Letters Patent

Appeal which was allowed by Division Bench of the High Court granting the disability pension from the date it fell due and not restricted to period of

three years and two months prior to the filing of Writ Petition. Union of India, feeling aggrieved by the said decision, preferred an appeal before

Hon'ble Supreme Court. The observations made by Hon'ble Supreme Court in para 5 & 6 are reproduced as under:

5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of Writ Petition or from the date of demand to date of Writ Petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.

13. This judgment is being followed subsequently in number of judgments. That being the scenario, since the applicant himself was not vigilant in pursuing his right and slept over the matter till the year 2016 when the representation was made, therefore, at the most, in view of the judgment of Hon'ble Supreme Court in Tarsem Singh (Supra), he can be granted the arrears of

disability pension for three years prior to the filing of the representation dated 12 August 2016.

14. In view of the foregoing, the OA is partly allowed. The respondents are directed to pay arrears of disability element of pension @ 50% for three years prior to 12.08.2016, within a period of four months failing which it shall attract interest @ 6%.

15. OA stands disposed of accordingly.

Pronounced in open court on this 27th day of November, 2019.