
(2019) 10 AFT CK 0053

In the Armed Forces Tribunal

Case No : Original Application No. 1346 Of 2018, Miscellaneous Application No. 1330 Of 2018

H.S. Uppal

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 24-10-2019

Acts Referred:

Citation : (2019) 10 AFT CK 0053

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

Bench : Division Bench

Advocate : V.S. Kadian, Y.P. Singh

Final Decision : Allowed

Judgement

1. Arguments heard.

OA stands disposed of vide separate order of even date.

MA 1330/2018

By way of the instant application, the applicant seeks condonation of delay of 6348 days in filing the present O.A. In view of the law laid down by the

Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh (2009) (1) A1SLJ 371, delay in filing the OA is condoned.

MA stands disposed of.

OA 1346/2018

Heard learned counsel for the parties.

2. Challenge in this OA is to the order dated 1st March, 2001 vide which the claim made by the applicant for disability pension was rejected.

3. The facts germane to the filing of present OA are that the applicant was

enrolled in the Indian Army on 4th October, 1964 and retired from service

on 31st July, 1995. At the time of retirement, the applicant was brought before duly constituted Release Medical Board, which viewed his disabilities,

(i) "ESSENTIAL HYPERTENSION 401" and (ii) "ISCHEMIC A HEART DISEASE CABG DONE 411" and assessed the same at the rate of

fifteen to nineteen per cent and twenty per cent respectively, the composite assessment was at the rate of twenty per cent, for two years.

4. However, the applicant was not granted Disability Element of Pension because the disability was not found attributable to nor aggravated by

service. The first and the second appeal preferred by the applicant were also rejected. Thereupon, the applicant filed the present OA claiming

Disability Element of Pension along with interest at the rate of twelve per cent per annum.

5. Learned counsel for the respondents, however, submitted that since the disability is neither attributable to nor aggravated by service, as such the

applicant is not entitled for the relief.

6. According to the applicant the relief sought by him in the instant matter is squarely covered by a catena of decisions of the Hon'ble Supreme Court

including Dharamvir Singh Vs. Union of India (2013) 7 SCC 31, Union of India Vs. Chandrapal, Union of India vs. Rajvir Singh (2015) 12 SCC 26,4

Union of India vs. Angad Singh Titaria (2015) 12 SCC 257, Union of India vs. Manjeet Singh (2015) 12 SCC 275, Ex Hay Maniram B.haria vs. Union

of India, Sukhvinder Singh vs. Union of India, Ex Gnr Laxmanram Mania vs. Union of India (2017) 4 SCC 69 According to the applicant, his claim

for disability pension is also supported by the applicable rules.

7. On the other hand, learned counsel for the respondents has contended that the claim put-forth by the applicant has been found to be 'Neither

Attributable to, Nor Aggravated by Military Service' by the Medical Board and, hence, he is not entitled to disability pension for the above disability,

since the opinion of the Medical Board, being an expert body, must be respected.

8. We have considered the submissions advanced by the learned counsel for both the parties in the light of the relevant rules and the judgment of the

Hon'ble Supreme Court rendered in Dharamvir Singh's case (supra), which has been followed in subsequent decisions of the Hon'ble Supreme Court.

In Dharamvir Singh's case, it has, inter alia, been held asunder:

I. The question whether a disability is attributable or aggravated by military service is to be determined under 'Entitlement Rules for Casualty

Pensionary Awards, 1982".

II. A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In

the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service.

III. If no note of any disability or disease was made at the time of individual's acceptance be deemed to have arisen in the service.

IV. If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease

will not be deemed to have arisen during service, the medical board is required to state the reasons.

9. The matter for implementation of orders of Hon'ble Supreme Court/AFTs in respect of armed forces personnel in NANA cases was taken up with

the Department of Expenditure, Ministry of Finance for consideration. Department of Expenditure had agreed to implement those orders, in fact, Govt.

of India, MoD letter F.No. 4(17)2015/D (Pen/Legal) dated 29.06.2017 was also sent to the Chief of Staff of Army, Navy and Air Force for

implementation of the judgment of Hon'ble Supreme Court in respect of Armed Forces Personnel in "NANA" (Neither Attributable to nor Aggravated

by military service) cases. However, no action was taken pursuant to this letter by the competent authority.

10. In fact, the Committee of Experts constituted by the Hon'ble Raksha Mantri while looking into the solutions for reducing litigations concerning the

Ministry of Defence and to put in place an efficient mechanism of redressal of grievances related to service and pension matters, inter alia,

recommended as follows :

Expert committee has recommended that whenever a legal point is settled by a High Court or the Supreme Court, the same must be universally applied

to all similarly placed employees or at least on individual representations after examining the same, rather than forcing- them into individual litigation.

In this regard, attention is drawn to D(C11411)'s ID No. 7(9)/2018/D(CMU) dated 26.06.2018 (copy enclosed). However, it is proposed that each

case may be decided on its merit, subject to consultation with Department of

Expenditure and DOF&T having regard to financial implications.

11. It is undisputed case of the parties that when the applicant entered into the military service, he was not suffering from the above disability, which

leaves no manner of doubt that the disability accrued to him during the course of Military Service. Hence, following the principles laid down in

Dharamvir Singh's case (supra), it is apparent that the disability is attributable or aggravated by Military Service.

12. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is entitled for Disability Element of Pension.

Therefore, the applicant is granted Disability Element of Pension for disability i.e. (i) "ESSENTIAL HYPERTENSION 401" and Up "ISCHAMIC

HEART A DISEASE CABG DONE 411" at the rate of twenty per cent for two years which in the light of the decision of the Hon'ble Supreme

Court in the case of Union of India Vs. Rani Avtar (Civil Appeal No. 418/2012) decided on 10th December, 2014 and Sukhvinder Singh Vs. Union of

India and Ors. [(2014) 14 SCC 364] and the Govt. of India, Ministry of Defence letter No.1(2)/97/D(Pen-C) dated 31st January, 2001, is to be

rounded off from twenty per cent to fifty per cent for two years with effect from the date of discharge from service, i.e., 31st July, 1995. In view of

the above the OA is partly allowed. The disabilities of the applicant at the composite rate of twenty per cent for two years are to be considered as

aggravated by military service and the applicant is entitled to disability pension with effect from the date of his discharge.

13. Further entitlement of the disability pension will be subject to the outcome of the Re-survey Medical Board which the respondents shall conduct

within four months from the date of receipt of copy of this order.

14. The respondents are directed to comply with this order within four months from the date of receipt of a copy of this order. In default it will carry

interest at the rate of eight per cent till the actual payment is made.

15. In view of the above, the instant OA deserves to be allowed, hence allowed in the aforesaid terms. No order as to costs.