
(2020) 02 AFT CK 0044

In the Armed Forces Tribunal

Case No : Original Application No. 553 Of 2017, Miscellaneous Application No. 472 Of 2017

Kamal Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Citation : (2020) 02 AFT CK 0044

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

Bench : Division Bench

Advocate : Archana Ramesh, Arvind Patel

Final Decision : Disposed Of

Judgement

MA 472/2017

1. Vide this MA, the applicant seeks condonation of delay of 172 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 MA and condone the delay of 172 days in filing the OA.

M.A. No. 472 of 2017 stands disposed of accordingly.

OA 553/2017

Having been found medically and physically fit the applicant was enrolled in the Indian Army on 04,10 1980 and was superannuated from service on

30_09.1999 on completion of 19 years of unblemished service. Thereafter. the applicant got enrolled in the DSC on 20 03 2003 and was to complete

15 years of military service so as to earn Service Pension on 30.03.2018 but the DSC authorities are not granting extension of service by two years on

account of two red ink entries in the last 5 years on minor offences of Intoxication and loss of I Card. Moreover, his disability Primary Hypertension was declared neither attributable to nor aggravated by military service.

2. Hence the OA was filed making following prayers,-

a) Issue directions to respondents to quash and set aside the DSC Records Letter dated 12 April 2016.

b) Issue directions to the respondents to grant extension of military service by two years from 30 June 2017 to 30 June 2019 by which time

the applicant would have attained the age of 57 years which is the maximum limit of service in the DSC.

c) Issue directions to the respondents to grant extension of military service/ condonation of shortfall of 9 months service from 30 June 2017

upto 31 Mar 2019 by which time he would have finished 15 years of service which is the basic mandatory criteria to earn Service Pension

d) Issue directions to the respondents to declare the Disability of Primary Hypertension as either attributable or aggravated to military

service in the light of the landmark Judgment of the Honble Supreme Court in Re Dharamvir Singh Vs. Union of India and Ors. Dated 02

July 2013 reported as (2013) 7 SCC 316 which is reflected in the Honble Armed Forces Tribunal, Principal Bench Judgments in OA No.

132/2014 in Re Major CM Mangain vs Union of India dated 23 Apr 2015 as also in OA 243/2014 in Re Naib Subedar Dharamvir Singh vs.

Union of India dated 06 May 2015_

e) Issue directions to the respondents to grant Army Group Insurance Fund proportionately to the Disability Pension percentage in the light

of the Hon ble Punjab and Haryana High Court judgment in Re Paramjit Singh versus Union of India dated 12 Feb 2008 which has been

upheld by the Hon ble Supreme Court vide order dated 04 April 2011.

f) Issue directions to the respondents to grant LPG Agency to the Applicant on the ground of grant of Disability Pension as per the rules of

the subject,

g) Pass such other and further orders/directions to the respondents in the attendant genuine circumstances of the case. to meet the ends of

justice.

3 Learned counsel for the applicant submit that the prayer regarding grant of extension of military service/ condonation of short fall of 9 months

service from 30.06.2017 upto 30.06.2018. was already granted vide order dated 02.08.2017. The only relief remained for grant of disability element of

pension for disability primary hypertension. In this regard, it is submitted that pursuant to the directions given by the Tribunal, Resurvey Medical Board

of applicant was conducted on 19.02.2019 and the disability primary hypertension although has been assessed as 30% but it has been opined as

NANA on the ground that disability was in peace area.

4. Relying upon *Dharamvir Singh Vs. Union of India and Ors.* (2013) 7 SCC 31 6 *Union of India and Ors. Vs. Rajvir Singh* (2015) 12 SCC 26 4 and

Union of India and Ors Vs. An gad Singh Titaria, (2015) 12 SCC 257. it is submitted that the applicant is entitled for the relief (D).

5. The matter for implementation of orders of the Honble Supreme Court in the matter of *Dharamvir Singh* (supra) in respect of Armed Forces

Personnel in NANA cases was taken up with the Department of Expenditure. Ministry of Finance for consideration. Accordingly. Ministry of

Defence by their letter dated 29th June. 2017 sent to the Chief of Staff of Army. Navy and Air Force for implementation of the orders of Hon ble

Supreme Court. has laid down the following essential parameters for allowing disability pension:

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 individuals acceptance for military service, a disease which has laid to an

individual's discharge or death will 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.

6. In view of the aforesaid judgments. the case of the applicant is fully covered by these judgments and mere fact that the disability was incurred in the peace area is no ground to deny him the benefit.

7. Under these circumstances. O A is allowed, the applicant is granted the benefit of disability element of pension @ 30% which is liable to be broad

banded to 50% in view of Union of India and Ors. Vs. Ram Avtar decided on 10'1 December .2014 from the date of his discharge. Arrears be paid

within a period of 4 months failing which interest @ 6% p.a. will be paid. No other relief is pressed. With these observations. OA stands disposed of.