
(2020) 03 AFT CK 0068

In the Armed Forces Tribunal

Case No : Original Application No. 1051 Of 2018, Miscellaneous Application No. 2044 Of 2019

Kewal Krishan Vij

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-03-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14, 31

Citation : (2020) 03 AFT CK 0068

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

Bench : Division Bench

Advocate : Bharat Singh, S.Bhati

Final Decision : Dismissed

Judgement

1. Vide separate order pronounced today. OA is dismissed.

Counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act. 2007. However, he

has not been able to point out any substantial question of law of general public importance involved in the matter which warrants grant of leave to

appeal.

Accordingly, request for leave to appeal is declined.

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) Call for the records including the RAO proceedings as the findings and opinion as approved by the competent authority dated

21.11.1978 and based on which the respondents in most illegal manner rejected

the claim of the applicant for disability pension in respect

of disability GENERALISED EPILEPSY-345 and thereafter quash all such order.

(b) Direct the respondents to process the claim of the Applicant in respect of disability GENERALIZED EPILEPSY-345 along with arrears

with an interest @12% as expeditiously as possible from the date of discharge from the service i.e. 01.04.1979.

(c) Further, direct the Respondents to extend the benefit of broad banding in respect of applicant's disability of GENERALISED EPILEPSY-

345 and round it off to 100% being CAT 'E '(P).

(d) Issue such other order/ direction as may be deemed appropriate in the facts and circumstances of the case.

2. Brief facts of the case are that the applicant was enrolled in the Indian Air Force on 11.12.1954 and was invalided out of service on 31.03.1979

having rendered 24 years and six months of service in low medical category and the disability was considered as neither attributable to nor aggravated

by military service (NANA). Disability pension claim of the applicant was rejected vide order dated 05.01.2018. It is in this perspective that this O.A.

has been filed.

3. Ld. Counsel for the applicant pleaded that the applicant was enrolled in the Indian Air Force 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. The action of the respondents in denying disability pension to the applicant is illegal. In this regard, he relied on the

decisions of the Honble Supreme Court in Dharamvir Singh v. Union of India and others, (2013) 7 SCC 316 and Union of India & Another Versus

Rajbir Singh (Civil Appeal No. 2904 of 2011, date of decision 13.02.2015) and submitted that for the purpose of determining attributability of the

disease to military service, what is material is whether the disability was detected at the time of enrolment and if no disability was detected at that

time, then it is to be presumed that the disability arose while in service,

therefore, the disability of the applicant is to be considered attributable to or aggravated by service and he is entitled to get disability pension duly rounded off. The Ld. Counsel for the applicant pleaded for grant of disability pension to the applicant.

4. On the other hand, Ld. Counsel for the respondents submitted that medical documents of the applicant have been destroyed after expiry of retention period and no information about the assessment and durability of the disability is available. However, the available records shows that the applicant's disability was considered as neither attributable to nor aggravated by military service (NANA). The applicant was informed about the rejection of his disability pension vide order dated 07.06.1979 and was advised to prefer appeal against the rejection of the claim, if he was not satisfied with the rejection of claim. However, the applicant did not prefer appeal, presuming that he was satisfied with the rejection of the disability pension claim.

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

5. Having heard the learned counsel for both the parties and perused the records, the only question that needs to be answered is, whether a decision can be taken on the attributability or aggravation of disease whose medical documents have been destroyed?

6. On careful perusal of the available records, it has been observed that the applicant was enrolled on 11.12.1954 and was invalided out after rendering 24 years and six months of service. The applicant has been granted service pension, however, disability pension claim was rejected by the competent authority. The applicant was advised to prefer appeal against the rejection of disability pension claim but instead he kept quiet and preferred no appeal. The documents of the applicant have been destroyed on expiry of retention period and whatever the limited information is available in the long roll indicates that the applicant's disability was considered as NANA.

7. In C. Jacob Vs. Director of Geology and Mining and another reported in (2008) 10 SCC 11,5 the Hon'ble Supreme Court held that "a dead or stale claim is not permitted to be revived. The person who sleeps over his right is not entitled for any indulgence". Further, Hon'ble High Court of Judicature at Allahabad vide their order dated 04.08.2004 in Civil Misc. Writ Petition No. 8524 of 2000 - titled Inderpal Singh Vs. UOI and Others,

had dismissed the petition holding that the petitioner himself was not interested in pursuing the matter and kept silent for 11 years. Consequently, the

appeal filed by the petitioner was wholly belated and the delay could not be condoned merely because the petitioner woke up after 11 years.

8. In the instant case, the applicant was advised by the respondents vide order dt 07.06.1979 to prefer appeal if he was not satisfied with the rejection

of disability pension and the applicant remained silent and did not prefer any appeal, thereby giving a presumption that he was satisfied that he was not

entitled for disability pension. Additionally, the respondents have already destroyed the medical documents in accordance with the policy on

preservation of service documents, hence the opinion of medical board on why the disability was made NANA is not known and thus, since no opinion

on attributability can be overruled without knowing the actual opinion, it may not be possible to apply the principle of Dharamvir Singh judgement

(supra).

9. Additionally, the law on the importance of the opinion of a medical board has been well settled by the Hon'ble Supreme Court. While pronouncing

judgment in Civil Appeal No 1837/2009, titled Union of India & Another vs. Ex Rfn Ravinder Kumar, the Hon'ble Apex Court vide its order dated

23.05.2012 had stated that opinion of Medical Board should not be over ruled judiciously unless there is a very strong medical evident to do so.

Relevant part of judgment is as given 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"".

10. In view of the above, we are of the opinion that medical documents of the applicant have been destroyed and no decision can be taken in vacuum

on attributability or aggravation of the disability without perusing the reasons based on which the original medical board had decided to consider the

disability as NANA. The O.A. is, therefore, devoid of merit and deserves to be dismissed. It is accordingly dismissed.

11. No order as to costs.

12. Pending application(s), if any, also stands disposed of.

Pronounced in the open court on 17th March. 2020.