

(2021) 03 AFT CK 0018

In the Armed Forces Tribunal

Case No : Original Application No. 418 Of 2019, Miscellaneous Application No. 525 Of 2020

Narendra Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-03-2021

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2021) 03 AFT CK 0018

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

Bench : Division Bench

Advocate : Praveen Kumar, J.S. Yadav

Final Decision : Dismissed

Judgement

1. Through the medium of the instant OA filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant is seeking the following reliefs :

(a) Quash the impugned letters dated 28.02.2019 and 16.03.2019; and

(b) Direct the respondents to grant disability element of disability pension of 50% as mentioned in the long roll sheet when the applicant was invaliding out from service with effect from 27.04.1981 along with interest 12% per annum till final payment is made as per the judgments passed by the Hon'ble Supreme Court in Civil Appeal No. 4949 of 2013 (Dharamvir Singh v. Union of India and others decided on 31.01.2001 and in Civil Appeal No. 418 of 2012 (- Ex Sep Narendra Singh and others v. Ram Avtar decided on 10.12.2014).

2. The facts of the present case, in brief, are that the applicant was enrolled in the Army on 06.08.1975 and was invalided out on 27.04.1981, after rendering 05 years, 08 months and 22 days of service. The applicant claims that he was found medically fit as per the medical standards required for recruitment at the time of enrolment. According to him, there was no mention that he was suffering from any kind of disease/injury or wound. On completion of training, the

applicant was posted to 15 Jat Regiment and was deployed in Mizoram, a counter insurgency area. While on duty, he sustained an injury and his finger had to be amputated. He was placed in the low medical category, BEE(P) and was invalided out from service after being diagnosed as a case of traumatic amputation (right) index finger (old) for life. Though the Invaliding Medical Board assessed his disability @ 20%, the PCDA (ID), Allahabad rejected his claim for disability pension, which, according to the applicant, is against the judgment of the Honble Supreme Court dated 13.02.2015 in the case of Union of India & Anr. Vs. Rajbir Singh 1(2015) 12 SCC 2651 Though several requests had been made by the applicant to the concerned authorities for grant of disability pension, the same were not heeded to. Finally, he submitted a representation on 29.08.2018, which was replied to by the Senior Record Officer, OIC Records JAT Regiment as under:

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2. It is intimated that Sheet Roll and all connected documents in respect of No.3166384K Ex Sep Narendra Singh has already been destroyed after expiry of retention period as per para 595 of DSR 1987 (Revised). As per record held with this office in Long Roll, disability pension was rejected by PCDA (P) Allahabad vide their letter No. G3/81/2995/VI/686 dt nil."

Hence the instant OA seeking the aforesaid reliefs.

3. Learned counsel for the applicant while arguing at condonation of delay for admission stage, submitted that the applicant was enrolled in the Army in a medically and physically fit condition and there was no note in his service records to show that he was suffering from any disease prior to enrolment, therefore, any disability suffered by the applicant after joining the service is attributable to military service. He claimed that the applicant received the injury in a counter insurgency area, therefore, the applicant is entitled to disability pension. In support of his arguments, he also placed reliance on the following decisions:

(i) Dharamvir Singh Vs. Union of India and others (2013 AIR SCW 4236); and

(ii) Deokinandan Prasad Vs. State of Bihar and others (AIR 1971 SC 1409)

4. On the other hand, learned counsel for the respondents, stated that the applicant was invalidated out of service in 1981 and based on the records as available at that time his disability pension was rejected by the competent authority. He further stated that now when his records have been destroyed after prescribed period of preservation, he approached the Tribunal after inordinate delay of about 39 years and, therefore, the OA is liable to be dismissed on that ground alone, without entering into the merits of the case. He further emphasized that his service documents had been destroyed in accordance with the rules and regulations on the subject and in the absence of the relevant medical documents and other records, it is not possible to give any meaningful response in terms of details of his disability and its attributability to military service. He pleaded for the OA to be dismissed.

5. We have heard the learned counsel for the parties and perused the available material on record.

6. It is an undisputed fact that there is an inordinate delay in approaching this Tribunal. That apart, no opinion of the Medical Board or any other related documents have been produced by the applicant, therefore, we are not in a position to conclude that the disability suffered by the applicant was attributable to military service. At this stage, learned counsel for the applicant stated that even if the records have been weeded out, the claim of pension cannot be rejected. He also pointed out that the opinion of the Medical Board is not required for adjudication of the present case in view of the fact that the discharge book issued by the concerned authority establishes the fact that the applicant had been invalidated out on medical ground. We do not find any force in that contention. Disability pension is not meant for every disability which a soldier has: it is meant for only that disability which is attributable to or aggravated by military service and the medical board's recommendation on attributability, is crucial for taking this decision.

7. Para 592 of the Army Regulations deals with disposal of obsolete documents. The Medical Board proceedings are to be retained for 25 years after an individual becomes non-effective in terms of Para 525 of the Regulations. However, Regimental Long Roll is one of the documents which is required to be preserved. Para 613 pertains to the entries in the Long Rolls. The claim of the applicant was rejected for the reason that the service record of the applicant had been destroyed after retention period of 25 years from the date of discharge. In this regard, it would be appropriate if we refer to the judgment of the Delhi High Court in a similar case i.e. Shri Deo Prakash Vs. Union of India and others 1-1V.P. (C) No.6141 of 1999] decided on 15.02.2008, wherein the Court held that if the record was destroyed, it cannot be said that there was any wrong by the respondents. The entries in the Long Rolls are required to be preserved permanently. The requirement is to record date and cause of becoming non-effective, but such entries in the Long Rolls are not primary evidence and don't reflect medical details required for a decision on granting disability pension. The primary medical record is not available after 25 years. The primary medical evidence related to the disability and cause of discharge having been destroyed, the long rolls is not conclusive to return a finding that the discharge of the applicant was attributable to military service.

8. Viewed thus, the contentions raised by learned counsel for the applicant for grant of disability pension, in our opinion, is misconceived for the reason that the statutory provision contained in Para 173 of the Pension Regulations for the Army is mandatory and cannot be overlooked while deciding the controversy. It was incumbent upon the applicant to produce the Medical Board's opinion to indicate that the disability was attributable to military service. It has been rightly submitted by learned counsel for the respondents that the discharge book mentions only the reason for discharge. It is not a substantive evidence to

establish the cause of disability and the related factor of attributability to military service. Therefore, the judgments relied upon by the learned counsel for the applicant, have no relevance, so far as this case is concerned.

9. As regards delay, in C. Jacob Vs. Director of Geology and Mining' and another reported in (2008) 10 SCC 115, 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, the Hon'ble High Court of Judicature at Allahabad vide their order dated 04.08.2004 in the case of Inderpal Singh Vs. UoI and Others [Civil Misc. Writ Petition No. 8524 of 2000], 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.

10. 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 the case of Union of India & Another Vs. Ex Rfn Ravinder Kumar [Civil Appeal No. 1837/2009], the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that opinion of Medical Board should not be over-ruled by the courts unless there is a very strong medical evidence to do so. Relevant part of the above judgment reads as 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 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 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."

11. In this context, it will be relevant to refer to the recent order of Hon'ble High Court of Delhi dated 08.09.2020 in Ex JWO Kewal Krishan Vij Vs. Union of India & Ors. [W.P. (C) No. 6093/2020] wherein the High Court has dealt with the issue of belated claim of disability pension after the medical records were weeded out as per the extant rules. The petitioner in this case had challenged the dismissal order passed by the Tribunal on 17.03.2020 in O.A. No. 1051 of 2018. In this regard, Para 16 of the order of the Hon'ble High Court upholding the order passed by the Tribunal reads as under :

"16. As far as the contention of the counsel for the petitioner, the petitioner being entitled to equality with Dharamvir Singh supra and Ex Gunner Vasant Mokashi supra is concerned, we have already hereinabove held the petitioner to be not similarly placed as Dharamvir Singh supra. As far as the aspect of delay is concerned, no doubt in Ex-Gunner Vasant Mokashi supra, the AFT condoned the said delay confining the claim for arrears to three years preceding the filing of

the petition but from a reading of the order, it appears that there was no serious opposition thereto inasmuch as there is no discussion on the said aspect. On the contrary, the petition filed by the petitioner before the AFT was opposed, by filing a reply including on the ground of delay. 'The order of condonation of delay is a discretionary order and exercise of discretion to condone the delay in one case in which there is no or not much opposition, does not form a precedent for condonation of delay in another case, though generally, same parameters have to be applied by the Court in all cases. However, in exercise of jurisdiction under Article 226 of the Constitution of India, it cannot be said that the discretion exercised by the AFT in the impugned order, to not condone the delay of 38 years, has been exercised illegally or perversely, to invite interference by this Court. The claim for disability pension cannot be equated to a claim for pay/emoluments in accordance with Rules or claim for other recurring payments which if not in accordance with law or contract can be claimed at any time. Disability pension, though payable month-by-month, payment thereof is dependent on a finding of disability attributable to or aggravated by service and in the absence of a finding of disability attributable to or aggravated by service, there can be no claim for disability pension; such finding is a finding of fact and not of law or contract, claim wherefor even if highly belated can be made at any time and granted with arrears for the period within limitation; on the contrary finding, even if erroneous, of "no disability attributable to or aggravated by service" if not challenged within reasonable time attains finality and a claim for disability pension cannot be made at any time, after decades, claiming the same to be a recurring payment. The counsel for the petitioner is misapplying Tarsem Singh supra."

12. Although the applicant has filed an application for condonation of delay, but he has failed to show any sufficient cause for the huge delay of about 39 years and in the absence of any sufficient cause, the same cannot be allowed. Even the Honble Supreme Court has laid down guiding principles for courts to consider while examining cases for condonation of delay by stating the "adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate." and "If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly." Also, "The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed to totally unfettered free play." Thus, the petition deserves to be dismissed on this count alone.

13. In view of the aforesaid facts and circumstances and also the guidelines laid down by the Hon'ble Supreme Court and the High Court, we are of the opinion that medical documents of the applicant have been destroyed after the prescribed retention period after following due process of law 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 'Neither attributable to nor aggravated by military

service' (NANA). That apart, it is evident that no sufficient explanation for condonation of inordinate delay has been adduced and hence, condonation of delay, cannot be accepted as a matter of right or equity and in the absence thereof, as detailed hereinabove, we are not in a position to show any indulgence in the matter.

14. Accordingly, OA as well as application for condonation of delay fail and thus stand dismissed. However, there shall be no order as to costs

Pronounced in open Court on this 17th day of March, 2021.