

**(2020) 01 AFT CK 0018**

**In the Armed Forces Tribunal**

**Case No :** Original Application No. 331 Of 2016, Miscellaneous Application No. 220 Of 2016

Naresh Kaushik

APPELLANT

Vs

Union Of India And Others

RESPONDENT

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**Date of Decision :** 23-01-2020

**Acts Referred:**

**Citation :** (2020) 01 AFT CK 0018

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

**Bench :** Division Bench

**Advocate :** Archana Ramesh, Arvind Patel

**Final Decision :** Allowed

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**Judgement**

MA 220/2016

1. By way of the instant application, the applicant seeks condonation of delay of 668 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) AISLJ 37,1 delay in filing the OA is condoned. MA

is allowed accordingly.

OA 331/2016

The claim of the applicant in the present OA is limited to the following reliefs:

a) Issue directions to the respondents to grant disability pension to the applicant @ 50% in the light of the judgment of the Hon'ble Supreme Court in

Re Dhararnvir Singh Versus Union of India dated 02 July 2013 placed herein as Annexure A-2 as also the Judgment of the Hon'ble Armed Forces

Tribunal in Re ERA Rakesh Kumar Aggarwal Versus Union of India in OA No.55/2012 dated 30 Mar 2015 placed herein as Annexure A-3.

b) (On the request of learned counsel for the applicant prayer (b) was deleted vide this Tribunal's order dated 09.10.2018.)

c) Issue directions to grant LPG Agency to the applicant based on his Disability percentage and the rules of which are placed herein as Annexure A-

6.

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

2. Through the medium of instant OA the applicant has put challenge to Letter No. B/38046A/349/2012/AF/PS-4 (2N0 Appeal) dated 14d1

November, 2013 rejecting the appeal entailing denial of disability pension to him.

3. The facts germane to the filing of present OA are that the applicant was enrolled in the Indian Army on 2<sup>nd</sup> September 1982 and on superannuation

released from service on 30<sup>th</sup> September, 2010, after rendering twenty eight years of service. At the time of release, he was brought before duly

constituted Release Medical Board, which viewed his disability, i.e., "Juvenile Myoclonic Epilepsy" and "Delusional Disorder" for life at the composite

rate of forty per cent. However, the applicant was not granted disability pension since it was neither found to be attributable to nor aggravated by

military service (NANA). Thereupon, the applicant has filed the present OA claiming Disability Element of Pension along with interest at the rate of

twelve per cent per annum.

4. According to the applicant, the relief sought by him in the instant matter is squarely covered by a catena of judgments of the Hon'ble Supreme

Court including Dharamvir Singh Vs. Union of India (2013) 7 SCC 316, Union of India Vs. Chandrapal, Union of India Vs. Rajvir Singh (2015) 12 SCC

264, Union of India Vs. Angad Singh Titaria (2015) 12 SCC 257, Union of India Vs. Manjeet Singh (2015) 12 SCC 275, Hav Maniram Maria Vs.

Union of India, Satinder Singh Vs. Union of India, Ex Gm Laxmanram Foonia Vs. Union of India (2017) 4 SCC 691. It is further submitted by

learned counsel for the applicant that the claim of the applicant for disability pension is also supported by the applicable rules.

5. On the other hand, learned counsel for the respondents has contended that the claim of disability "Juvenile Myoclonic Epilepsy" and "Delusional

Disorder" at the composite rate of forty per cent for life put forth by the applicant has been found to be 'Neither Attributable to Nor Aggravated by

Military Service' (NANA) by the Medical Board therefore, he is not entitled to disability pension. It is further contended that the opinion of the

Medical Board, being an expert body, must be respected.

6. We have considered the submissions advanced by learned counsel for both sides and have also perused the records available on the file. In the light

of rival submissions, the sole question before us is as to whether the disability of the applicant is attributable to or aggravated by military service.

7. In this connection, we have noted that the first ID "Juvenile Myoclonic Epilepsy" has been recorded as a disease of central nervous system and the

second ID "Delusional Disorder" has been recorded as a psychiatric disorder with various endogenous/exogenous factors. The onset of the ID, as

recorded, was in July 2004, i.e., after twenty two years of service. We have noted that the RMB has denied attributability primarily on the ground that

both the diseases originated at a peace station. We are of the opinion that denial of attributability on the ground that it originated in a peace station and

not in or high altitude area, amounts to being unfair to the applicant because military stations in peace areas also have their own unique pressures of

hard training and demanding military life. Additionally the exact cause of both these diseases is not known in medical literature and therefore since the

disease has first started in the applicant after twenty two years of service, benefit of doubt must go in favour of the applicant. Hence, we are of the

considered opinion that the benefit of doubt in this case leans in favour of the applicant and his disability is to be considered as aggravated by military

service in the light of the well settled law by Hon'ble Supreme Court in the case of D.haramvir Singh (supra).

8. So far as rounding off is concerned, in the light of the decision of the Hon'ble Supreme Court in the case of Union of India and Ors. Vs Ram Avtar

(Civil Appeal So.418 of 2012 decided on 1061 December, 2014, the applicant is entitled to the benefit of rounding off from forty per cent to fifty per

cent with effect from the date of his discharge from service. However, considering the fact that the OA has been admitted condoning the delay, in

view of the decision of Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Tarsem Sinsh (2009) (1) AISLJ 371, the arrears are

restricted to a period of three years preceding the date of filing of the OA. The date of filing of the OA is 18th March, 2016.

9. In view of the above, the applicant is entitled to disability element at the rate of forty per cent rounded off to fifty per cent for life. The respondents

are directed to implement this order within four months from the date of receipt of copy of this order, failing which, applicant shall be entitled to

interest at the rate of eight per cent per annum till the date of actual payment.

10. Hence, the instant OA deserves to be allowed in the aforesaid terms. No order as to costs.

Pronounced in open Court on this 23th day of January, 2020.