

(2020) 02 AFT CK 0062

In the Armed Forces Tribunal

Case No : Original Application No. 966 Of 2018, Miscellaneous Application No. 871 Of 2018

Satya Prakash

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Citation : (2020) 02 AFT CK 0062

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

Bench : Division Bench

Advocate : Praveen Kumar, K.K. Tyagi, Sonali Tiwari

Final Decision : Disposed Of

Judgement

1. Counsel for the applicant submits that the applicant has died on 16th October 2019 in an accident. His wife has pre-deceased him. No legal

representative has come forward to pursue the OA.

As such, OA stands disposed off.

M.A. No. 871 of 2018:

By virtue of this application, the applicant seeks condonation of delay of 12757 days in filing the present OA. In view of the law laid down by the

Honble Supreme Court in the case of Union of India & Ors. Vs. Tarsem Singh (2009) (1) AISLJ 37,1 delay in filing the OA is condoned. However, in

case the applicant is entitled to relief, then the arrears will be restricted to three years preceding the filing of OA.

Accordingly, M.A. No. 871 of 2018 stands disposed of.

O.A. No. 966 of 2018:

Having been found medically and physically fit, the applicant was enrolled in the Indian Army on 27.07.1976. The applicant was invalided out of

service on 19.05.1983. The Invaliding Medical Board assessed the applicant's disability 'Neurosis 300' @ 20% for two years, but the disability was

held 'neither attributable to nor aggravated by military service' (NANA).

2. Learned counsel for the applicant contended that the instant matter is squarely covered by a catena of decisions of the Hon'ble Supreme Court

including Dharamvir Singh Vs. Union of India and Ors. (2013) 7 SCC 31,6 Union of India and Ors. Vs. Rajbir Singh (2015) 12 SCC 26 4and Union of

India and Ors. Vs. Angad Singh Titaria (2015) 12 SCC 257 and Sukhvinder Singh Vs. Union of India [Civil Appeal No. 5605 of 2010 - Judgment

dated 25.06.2014].

Further, the claim of the applicant is also supported by relevant rules.

3. Per contra, learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the IMB, being an Expert

Body, found the disability ""Neither Attributable to Nor Aggravated by Military Service"" and that he was invalided out from service.

4. Having heard learned counsel on both sides, we are of the view that the case in hand is squarely covered by the decisions referred to hereinabove.

In Dhararnuir Singh (supra), the Hon'ble Supreme Court held that any disability sustained during the course of Military Service will be attributed to

service conditions unless the disability was such that the disease could not have been detected on medical examination before a person is selected for

Defence Service and furthermore before arriving at a conclusion, the Release Medical Board should have assigned reasons, in writing, that the

disability was not due to Military Service. There is no dispute with regard to the fact that when the applicant entered into service, he was not suffering

from any disease and that the disability in question was detected! sustained only during the course of his Military Service.

5. The present case, where the applicant was invalided out of service, is also covered by the judgement of the Hon'ble Apex Court in Sukhvinder

Singh's case (supra), wherein it was observed that it would be extremely disturbing if the 1 Authorities are perceived as being impervious or

unsympathetic towards members of the Armed Forces who have suffered disabilities, without receiving any form of recompense or source of

sustenance, since these are extricably germane to their source of livelihood. Honble Apex Court, after taking note of various rules and regulations, relating to the grant of pension, held as under:

9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, itperforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.

6. In the light of the preceding paragraphs and essential parameters given aforesaid, we hereby set aside the impugned order rejecting the claim of the applicant for disability pension and hold that he is entitled to disability pension from the date of invalidment @ 20% which is to be broad-banded to 50% in the light of the judgment of the Hon'ble Supreme Court in Union of India and Ors. Vs. Ram Avtar [Civil Appeal 418 of 2012] decided on 10th December, 2014.

7. Since the applicant has approached the Tribunal after a considerable delay, the arrears are restricted to three years prior to the date of filing i.e. 14.05.2018.

8. Accordingly, the respondents are directed to release the arrears within a period of four months from the date of receipt of a copy of this order, failing which, the arrears shall carry interest at the rate of 6% per annum.

9. The OA stands disposed of in the above terms with no order as to costs