

(2020) 03 AFT CK 0084

In the Armed Forces Tribunal

Case No : Original Application No. 1274 Of 2018, Miscellaneous Application No. 1389 Of 2018

Tarang Pal Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 13-03-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2020) 03 AFT CK 0084

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

Bench : Division Bench

Advocate : Chaitanya Agarwal, Shyam Narayan

Final Decision : Dismissed

Judgement

MA 1389/2018

1. Vide this M.A., the applicant seeks condonation of delay of 8128 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 f2008 (8) SCC 6481, we

allow the instant MA and condone the delay of 8128 days in filing the OA.

2. MA No 1389 of 2018 stands disposed of accordingly.

OA 1274/2018

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) To direct the respondents to allow the disability pension from the time applicant was released from service i.e. 01 Jul 1994.

(b) To direct the respondents to grant the benefit of rounding off disability of the applicant from 40% to 50% after rounding off in terms of GO1 letter

dated 31 Jan 2001.

(c) To grant an interest @18% on delayed payment of the disability pension.

(d) Award cost towards this litigation and towards medical expenses occurred in his treatment

(e) Any other relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 01.07.1966 and was discharged from service on completion of

terms of engagement on 30.06.1994 in low medical category due to 'Anterior Myocardial Infraction' having rendered 28 years of service. The RMB

of the applicant was held on 16.12.1993 at Base Hospital, Delhi Cantt which had assessed his disability @ 40% for two years and considered as

neither attributable to nor aggravated by military service (NANA). Disability pension claim of the applicant was rejected vide order dated 21.07.1995.

Thereafter First Appeal was preferred which has also been rejected vide order dated 13.08.1996. 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 Army 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 Honible 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 @40% and the same is to be broad banded to @50%. 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 since the RMB has opined the disability as NANA, the applicant is not entitled to disability pension. He further accentuated that the applicant is not entitled to disability pension in terms of Rule 173 of Pensions Regulations for the Army 1961 (Part-I) which stipulates that, "unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over but in the instant case the disability of the applicant has been assessed at 40% for two years and considered as NANA, 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 the disability of the applicant is attributable to or aggravated by military service?

6. On careful perusal of the medical documents, it has been observed that the applicant was enrolled on 01.07.1966 and the disease had first started

on 06 May 1990 i.e. after rendering 24 years of service. The Release Medical Board considered the disease of the applicant as NANA on the

grounds that the disease occurred towards end of Annual Leave and not likely to be related to stress and strain of service. Perusal of Specialist

medical opinion in the Release Medical Board reveals that the applicant had been a smoker. Summary and opinion of Col Dinesh Prasad, AMC,

Senior Advisor (Medicine), reads as under:-

At present asymptomatic on regular anti anginal drugs, he can walk upto 5 kms without symptoms, he was a smoker but left smoking and

there is no modifiable risk factor for CAD. DE: Not obese, weight-66 kg (ideal body weight 65 kg),

7. Thus, it is clear that the applicant was a smoker till the onset of disease and has thereafter left smoking Smoking cigarettes is known to damage the

heart, blood vessels and blood cells. It is known to build up plaque in the blood vessels and reduce blood flow. It is known to enhance the risk of a

heart disease by 2-4 times hence cigarette packets have statutory health warning. Human health is dependent on a combination of many health

markers which decide the overall health of a person. It is therefore best left to experts, i.e., doctors to decide on health matters. Thus, in sum and

substance we are of the opinion that in this case, we have no valid reasons to interfere with the opinion of medical board declaring this disease as

NANA.

8. It has been well settled by the Hon'ble Supreme Court that the opinion given by the expert Medical Board should be given due weightage and

credence. 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"".

9. Additionally, the Hon'ble Supreme Court judgement in Civil Appeal No 7672 of 2019 in Ex Cfn Narsingh Yadav vs Union of India & Ors. has again

stated that opinion of the medical board should not be overruled till there are very valid reasons and strong medical evidence to dispute the opinion of

Medical Board. The relevant part of the aforesaid judgment is as given below:-

21. Though, the opinion of the Medical Board is subject to judicial review but the courts are not possessed of expertise to dispute such

report unless there is strong medical evidence on record to dispute the opinion of the Medical Board which may warrant the constitution of

the Review Medical Board.

10. In the instant case, it is clear that the applicant has been a smoker in May

1990 when he suffered from the disease and smoking increases the risk of heart diseases. Even if it is presumed that the applicant had left the smoking, it does not entitle him for extending the benefit of doubt in his favour.

Therefore, we are not inclined to interfere with the opinion of RMB. 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 stand disposed of.

Pronounced in the open court on 13th March, 2020.