
(2020) 02 AFT CK 0060

In the Armed Forces Tribunal

Case No : Original Application No. 794 Of 2015, Miscellaneous Application No. 1234, 1235 Of 2019

W.F. Andrade

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Citation : (2020) 02 AFT CK 0060

Hon'ble Judges : Sunita Gupta, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : Vibhuti Sharma, S.S. Pandey, V.S. Mahndiyan

Final Decision : Allowed

Judgement

,

MA 1234/1019,

1. Vide this MA, the applicant seeks condonation of delay of 12225 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 [2008 (8) S CC 648/ we,

allow the instant MA and condone the delay of 12225 days in filing the OA.,

MA 1234 of 2019 stands disposed of accordingly.,

MA 1235/2019,

Vide this application, applicant seeks condonation of delay of 37 days in filing MA for condonation of delay in OA to which, there is no objection from",

the opposite side.,

In view of the averments made in the application, delay of 37 days in filing MA

for condonation of delay in OA is condoned. Same is taken on the",
record. MA stands disposed off.,

O.A No 794/2015,

Aggrieved by the order of the respondents (Air Force Record Office) vide letter dated 12.04.1982 denying him disability pension despite his being,

invalided out from service due to 'Adult Onset Generalised Seizure' on the contention that the disability was neither attributable nor aggravated,

(NANA) by military service, the applicant, an ex- Corporal of the Indian Air Force, who was invalided out from service on 14.08.1981 with about",

eight years and six months of service, has filed this O.A. seeking the following reliefs .-",

(a) Quash the impugned orders by the respondents dated 13.04.1982, 08.09.1983 and 29.10 1983.",

(b) Grant the applicant disability pension w.e.f his date of invalidation from service @50% alongwith interest.,

2. Heard the learned counsels on both sides and perused the pleadings and documents on record.,

3. The facts germane to the case, as averred by the applicant, are that he was recruited in the radar operators trade of the Indian Air Force on",

28.02.1973 and was promoted in due course to the rank of Corporal. In February 1980, the applicant, while posted at Shillong, was diagnosed with the",

disease "'Adult Onset Generalised Seizure' and was downgraded to low medical category `CEE' (temporary). Subsequently,after two more reviews, he",

was invalided out of service on 14.08.1981, by when he had completed eight and half years of service. The Release Medical Board, held at the time of",

his discharge from service, assessed his degree of disability as 15-19%. The applicant was not granted disability pension, despite his appeals to the",

respondents, on the ground that his medical disability was neither attributable to nor aggravated (NANA) by military service. Hence, this O.A.",

4. With regard to the delay in filing this O.A, learned counsel for the applicant has contended that non grant of disability pension is a continuing cause",

of action and the application cannot be rejected just on that count.,

5. Learned counsel for the applicant has referred to the Record of Service dated 15.11.2007 in respect of the applicant, in which it is mentioned as",

follows :-,

The 1.D. viz, Adult Generalised Epilepsy having been accepted neither attributable nor aggravated by service, No D.P is admissible under",

rule vide UTS/ARCe11/82/Dis/203/11 dated 03.04.1982"".",

6. Counsel has contended that the applicant was found fully fit medically by the Medical Board at the time of his recruitment into the Air Force in,

1973. Therefore, in keeping with a catena of judgments by the 1--lon'ble Supreme Court and this Tribunal, the medical disability that he contracted",

during the course of his military service due to which he has been invalided out of service in 1981, should be treated as attributable/aggravated by",

military servic:e.,

7. Reliance is placed on the judgment dated 26.06.2014 of the F-lon'ble Supreme Court in the matter of Sukhvinder Singh Vs. Union of India and,

others (Civil Appeal No 5605 of 2010) (14) SCC 364 whereby it was directed that any disability leading to invaliding out of service would attract grant,

of minimum 50% disability pension (after broadbanding). Paras 9 and 10 of the aforesaid judgment is reproduced as hereunder,

9. We are of the persuasion, therefore, that firstly, any disability not recorded atthetimeof 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 ofthe 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,thismoralewouldbe 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 is to be logically so. Fourthly, wherever",

a member of the Armed Forces is invalided out of service, it perforce 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 wouldattract the grantoffiftypercent",

disability pension.,

10. In view of our analysis, the Appellant would be entitled to the Disability Pension. The Appeal is, accordingly, accepted in the above",

terms. The pension along with the arrears be disbursed to the Appellant within three months from today"".",

Hence, as the applicant was medically invalided out of service before completing pensionable service, he is fully covered by this judgment and thus is",

entitled to disability pension @,50% from the date of his invalidation from service.",

8. Learned counsel for the respondents, on the other hand, has rebutted the arguments made on behalf of the applicant and contended that the O.A",

needs to be rejected on the grounds of limitation due to the inordinate delay of 34 years, during which time all his documents have been weeded out",

and destroyed in accordance with extant rules. Nonetheless, on merits also, the applicant does not have a case. As per the information retained on his",

long roll, the Invalidation Medical Board (IMB) had found that his medical disability 'Adult Generalised Epilepsy, was neither attributable to nor",

aggravated (NANA) by military service and therefore, his claim for disability pension was rejected.",

Percentage of disability as assessed

by invaliding medical board", "Percentage ,to be reckoned for

computing of disability element

Less than 50,50

Between 50 and 75,50

Between 76 and 100,100

16. No order as to costs,",

Pronounced in open Court on the 19th day of February 2020.,