

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

10.

OA 3239/2023 with MA 4419/2023

Nb Sub (hony) Arvinda Kumar Azad (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Ms. Prachi, proxy for
Mr. Manoj Kumar Gupta, Advocate
For Respondents : Mr. Waize Ali Noor, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN P. M. HARIZ, MEMBER (A)

ORDER
25.10.2023

The applicant vide the present OA makes the following prayers:-

(a) To direct the respondents to grant disability element of pension for life by RECALLING initial rejection letter as well as RMB Proceedings and setting aside the same to the extent it denied DE to the Applicant; and/or

(b) Grant DE with broad banding benefit of rounding off from 30% to 50% by treating his disability as attributable to and aggravated from the Military service in terms of judgments placed at Annex-A4, relying upon the settled Law of Hon'ble Apex Court in Dharamvir Singh (Supra), Uol vs Rajbir Singh and Rakesh Pandey (Supra); and/or

(c) To direct the respondents to pay due arrears of disability pension with interest @10% p.a. with all the consequential benefits; and/or

(d) Call for original medical records including RMB proceedings as same has not been supplied to him and also initial rejection letter etc, and/or To pass such further order

or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.

Along with the same is MA 4419/2023 filed on behalf of the applicant seeking condonation of 2850 days is delay in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of *UoI & Ors Vs Tarsem Singh* 2009(1)AISLJ 371 and in *Ex Sep Chain Singh Vs Union of India & Ors* (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 4419/2023 is allowed and the delay of 2850 days in filing the OA 3239/2023 is thus condoned. The MA is disposed of accordingly.

Inasmuch as the first appeal of the applicant dated 19.01.2023 was not responded by the respondents within a stipulated period of six months from the date of institution thereof, in terms of Section 21(2)(b) of the AFT, Act 2007 we consider it appropriate to take up the OA for considerations.

Notice of the OA is thus issued and accepted on behalf of the respondents. The counter affidavit of the respondents be filed within a period of four weeks. Rejoinder, if any, thereto be filed by the applicant within a period of four weeks thereafter.

List the matter before the Principal Registrar on 08.01.2024 for completion of pleadings and before the Bench thereafter.

The original RMB proceedings be produced by the respondents on the next date of hearing.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT GEN P. M. HARIZ)
MEMBER (A)