

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

K.

OA 632/2019

Maj Prakash Chand Azad (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

:

Mr. Shakti Chand Jaidwal, Advocate

For Respondents

:

Mr. Shyam Narayan, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER
26.09.2023

Vide our orders of even date, we have allowed the OA. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[RAJENDRA MENON]
CHAIRPERSON

[P.M. HARIZ]
MEMBER (A)

Neha

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 632 of 2019

In the matter of :

Maj Parkash Chand Azad (Retd.)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Shakti Chand Jaidwal, Advocate

For Respondents : Shri Shyam Narayan, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

1. This application under Section 14 of the Armed Forces Tribunal Act 2007 has been filed by the applicant who is aggrieved on being denied disability element of pension from the date of his retirement instead of 15.02.2017 the date from which date the applicant has already been granted by the respondents.
2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 12.07.1975 and subsequently commissioned on 04.12.1993. On superannuation, the applicant retired from service on 31.12.2005. Before

retirement, the applicant was brought before the Release Medical Board (RMB) on 27.07.2005, which assessed the disabilities of the applicant as (i) NIDDM @ 20% for life and (ii) DYSLIPIDEAMIA @ 20% for life, with composite assessment of disablement @ 40% for life. However, the disabilities were opined as 'neither attributable to nor aggravated by military service'. Based on this, the applicant was denied the disability element of pension.

3. The applicant preferred the first appeal on 14.01.2017 belatedly for the disability pension. To this, the respondents replied stating that initial claim of the applicant was rejected in 2006 and that his appeal was being considered. Thereafter, the respondents conceded the first disability 'Diabetes Mellitus Type -II (NIDDM) only as aggravated by the military service and accordingly granted disability element of pension for the said disability @ 20% from the date of first appeal i.e. 15.02.2017 instead of date of retirement on the ground of delay and the second disability was held to be 'neither attributable to nor aggravated by service'. The applicant then preferred the second appeal dated 26.04.2018

for grant of disability element of pension with effect from the date of retirement, which was rejected by the respondents.

4. Learned counsel for the applicant reiterating the factual matrix of the case, submitted that the applicant, at the time of enrolment, was fully fit medically and physically, and no note was made in his medical documents. He further submitted that the respondents committed an error in not taking into consideration the fact that the applicant just after having diagnosed with the disability 'Diabetes Mellitus Type-II (NIDDM)', was posted in the semi-field area which aggravated the disability and hence, the applicant's disability was at least to be considered as aggravated by military service from the date of retirement itself and referring to Rule 9 of the Entitlement Rules for Causality Pensionary Awards, 1982, he contended that the applicant should have been given benefit of doubt and the disability should have been conceded aggravated by service only. Learned counsel further contended that the Tribunal has already granted disability pension to many similarly situated persons from the date of retirement and the applicant is also entitled to the same benefit.

5. *Per contra*, learned counsel for the respondents submitted that the applicant is not entitled to the disability pension from the date of retirement as in terms of GoI, MoD Policy letter dated 14.12.2004, in cases of appeal after a long delay without any specific reason, the arrears of disability pension, if any, should not be paid for the entire period. Learned counsel submitted that the applicant retired on 31.12.2005 but he preferred the first appeal after a huge delay of more than 10 years and thus he was rightly granted the disability pension from the date when he preferred the first appeal and not from the date of retirement. Hence, learned counsel prayed that the OA may be dismissed.

6. We have heard the learned counsel for the parties and have perused the record.

7. It is undisputed fact that the applicant retired from service on 31.12.2005 and that the RMB assessed the disabilities of the applicant as 'neither attributable to nor aggravated by military service' and that the initial claim for disability was rejected. It is also not disputed that when the applicant filed the first appeal on 31.05.2017, the respondents conceded one of the disability 'Diabetes Mellitus

Type-II (NIDDM)' as aggravated by military service and consequently granted disability pension from the date of the first appeal i.e. 31.05.2017. The assessment of the other disability remained unchanged. However, the applicant, through this OA, is only praying for grant of disability pension from the date of retirement @ 50% in respect of the disability 'Diabetes Mellitus Type-II (NIDDM) only.

8. Admittedly, the disability 'NIDDM' has already been conceded as aggravated by the military service by the competent authority of the respondents and the applicant was already granted disability element of pension from 15.01.2017 as the first appeal was preferred by the applicant belatedly on 14.01.2017. Now the short question which is to be decided in the present case is as to whether the applicant is entitled to disability element of pension from the date of retirement when the applicant had approached the respondents for the benefit after huge delay of more than 10 years of rejection of his initial claim ?

9. In the case at hand, although the applicant after his retirement, the initial claim for grant of disability pension was rejected in the year 2006, he slept over the matter and

remained silent till January, 2017 and chose not to avail the remedies available under the statutory provisions. Although as per Section 22(1) of the AFT Act, the limitation period for filing an appeal was only six months, however, in view of Section 22(1)(b), the same could have been entertained. Moreover, the issue regarding delay in filing the OA has already been dealt with in detail by the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Tarsem Singh [2008 (2) SCC (LNS) 765]**, which has been followed by the Tribunal in catena of its judgments. In that case, the Hon'ble Supreme Court held as under :

"5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the

consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

6. *In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.*

[Emphasis supplied]

10. In the present case, admittedly, when in the year 2017, the applicant approached the respondents by filing the first appeal dated 14.01.2017, the respondents granted disability pension to the applicant conceding the disability as aggravated by military service, but it was granted with effect from the date of first appeal on the ground of delay. In view of the judicial pronouncement made by the Hon'ble Supreme Court in the case of *Tarsem Singh (supra)*, which is being followed by the Tribunal in large number of cases for condoning the delay, in our view, the applicant in this case is entitled to the arrears of the disability element of person for a

period of three years prior to the date of filing the appeal i.e. 14.01.2017.

11. With the aforesaid, the OA is allowed to the effect that the respondents are directed to pay arrears of the disability element of pension @ 50% for three years prior to the date of filing the appeal dated 14.01.2017. The respondents are further directed to comply with this order within four months from the date of receipt of copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

12. Pending MAs, if any, stand closed accordingly. There is no order as to costs.

Pronounced in open Court on this 26 day of September, 2023.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/ng/