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

O.A. No. 1232 of 2019
with
M.A. No. 1969 of 2019

In the matter of :

Ex RO-I Deepak Kumar ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Shri Virender Singh Kadian, Advocate

For Respondents : Shri K.K. Tyagi, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R

M.A. No. 1969 of 2019 :

Vide this application, the applicant seeks condonation of 1185 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of ***Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]*** and in ***Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]***, delay in filing the OA is condoned.

MA stands disposed of accordingly.

O.A. No. 1232 of 2019 :

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

> ***"(a) direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability element of pension with the benefits of broad banding and/or***
>
> ***(b) Direct respondents to pay the due arrears of disability pension with interest @ 12% p.a. from the date of discharge with all the consequential benefits.***
>
> ***(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."***

2. The applicant was enrolled in the Indian Navy on 04.08.2005 and was invalided out from service on 16.02.2016 after rendering 10 years, 06 months and 12 days

of service due to being in low medical category S5A5(S). The Invaliding Medical Board (IMB) held on 19.12.2015 assessed the disabilities of the applicant i.e. (i) DYSTHYMIA @ 40%; (ii) OBESITY @ 6-10% and (iii) DYSLIPIDEMIA @ 6-10%, with composite assessment of all the disabilities @ 50% for life, and held the same as 'neither attributable to nor aggravated by military service (NANA)' and based on which, the applicant was denied disability element of pension. However, invalid pension was duly sanctioned to the applicant vide PPO No. 09/97/B/D/00011/2016 dated 02.12.2016. The applicant served Appeal-cum-Legal Notice dated 03.11.2018 for grant of relief. When no response is received from the respondents, the applicant has filed the present OA seeking grant of disability element of pension with broadbanding benefits along with interest.

3. Having gone through the material available on record in the present case, we find that the applicant is already in receipt of invalid pension for the service rendered by him of more than 10 years which was sanctioned vide PPO No. 09/97/B/D/00011/2016 dated 02.12.2016. As the provisions for grant of invalid pension is not provided in the

Navy Pension Regulations, we would like to refer to the provisions regarding grant of invalid pension given in the Pension Regulations for the Army, 1961 (Part-I) at Para 197, which is to the effect :

> ***"197. Invalid pension/gratuity shall be admissible in accordance with the Regulations in this chapter, to :***
>
> ***(a) an individual who is invalided out of service on account of a disability which is neither attributable to nor aggravated by service;***
>
> ***(b) an individual who is though invalided out of service on account of a disability which is attributable to or aggravated service, but the disability is assessed at less than 20%, and***
>
> ***(c) a low medical category individual who is retired/discharged from service for lack of alternative employment compatible with his low medical category."***

4. The disabilities of the applicant have been considered as neither attributable to nor aggravated by military service by the Invalidating Medical Board. In our view, the applicant is entitled to the invalid pension only which has already been sanctioned. In view of the matter, no order is required to be passed in this case.

5. Accordingly, the OA 1232/2019 being devoid of merit is dismissed.

6. There is no order as to costs.

Pronounced in open Court on this 4 day of July, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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