

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

O.A. No. 1760 of 2019

In the matter of :

Ex Sigmn Sagar Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Virender Singh Kadian, Advocate

For Respondents : Shri Niranjana Das, Advocate

CORAM:

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

ORDER

Through the medium of the instant OA filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant is seeking grant of service element of disability pension as well as disability element along with broad-banding benefits from the date of his invalidment from service with arrears and interest.

2. The facts of the present case, in brief, are that the applicant was enrolled in the Indian Army on 03.08.1957. The applicant claims that he suffered with a disability and was placed in low medical category. He is stated to have

been invalided out from service on 02.11.1965 after 08 years and 03 months of service due to suffering from Hysteria Motor (Fits) injury, which was held by the Invaliding Medical Board as neither attributable to nor aggravated by service. The case for grant of disability pension was rejected by the PCDA (P) Allahabad vide letter dated July, 1966. It is the case of the applicant that he represented through Ex-Servicemen Adalat conducted on 30.06.2012 and the same was replied to stating that no action could be taken at the belated stage as the service/medical documents had been destroyed by burning after expiry of stipulated retention period.

3. Thereafter the applicant served a Legal Notice-cum-Representation dated 13.08.2017, which was replied to and it was informed that all service records including Sheet Roll and all medical documents had been destroyed on completion of stipulated time period in accordance with the relevant provisions under the Army Regulations. The applicant then filed O.A. No. 486 of 2018. The Tribunal, vide its order dated 28.02.2018 disposed of the same directing the respondent to treat the OA as an appeal and pass an

appropriate speaking order within a period of three months. In compliance of the aforesaid order, the respondents rejected the said appeal vide order dated 04.04.2019. Hence, the present OA.

4. Learned counsel for the applicant submitted that the applicant, at the time of joining the service, after a thorough medical examination, was declared fully fit medically and physically and no note was made in his medical documents that he was suffering from any disease at that time. In this regard, he referred to Rule 5 r/w Rule 14(b) of the Entitlement Rules to state that in absence of any note on record of the disease at the time of entrance, in the event of his subsequently being invalidated out from service on medical grounds, any deterioration in his health is to be presumed due to service. Relying on the judgments of Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India and others** [2013 AIR SCW 4236]; **Union of India Vs. Rajbir Singh** [(2015) 12 SCC 264]; and **Sukhvinder Singh Vs. Union of India** [(2014 STPL (web) 468 SC], and prayed for grant of disability element of pension to the applicant.

5. With regard to the grant of service element, learned counsel for the applicant placed reliance on the judgment dated 23.02.2012 of the Hon'ble Supreme Court in **Union of India & others Vs. Ex Gnr Sinchetty Satyanarayan & 42 others [S.L.P. (C) No. 20868 of 2009]** wherein the benefit of 'service element' to all those invalidated out prior to 1973 with less than the qualifying service for pension was granted w.e.f. 01.01.1973.

6. On the other hand, learned counsel for the respondents, stated that all the service record as well as medical records of applicant had been weeded out/destroyed by burning after expiry of its retention period in accordance with Paras 595(a)(i) of the Defence Service Regulations for the Army 1987, Vol-II (Revised) and only date of enrolment as per Long Roll and date of invalidment could be made available. Apart from the above, no more information was available with them. Learned counsel further submitted that the Long Roll, which is prepared before destruction of documents is a very brief record of about half page to one page and does not have any information on the disability of the applicant as well as the opinion of medical board. Learned counsel further stated that the applicant approached them after a delay of about 47 years and now it is not possible for respondents to make any

comments on his nature of disease if any, or its percentage or the opinion of medical board on attributability/aggravation. However, the fact that he is not in receipt of disability pension and as he himself stated in his petition indicates that his disability was considered as NANA at the time of his discharge. He submitted that the OA is liable to be dismissed on the ground of huge delay of 47 years alone, without entering into the merits of the case. He further emphasized that his all service documents had been destroyed in accordance with the rules and regulations on the subject and in the absence of the relevant medical documents and other records, it is not possible to give any meaningful response in terms of details of his disability and its attributability to military service. He pleaded that the OA may be dismissed.

7. We have heard the learned counsel for the parties and perused the available limited material on record.

8. As per record, it is an undisputed fact that while the applicant was invalided out from service in 1965, he approached the respondents in the year 2012 and thus there is an inordinate delay of about 47 years and then the OA was filed in this Tribunal in the year 2019. It is also a fact that,

except the Long Roll, respondents have destroyed all service and medical documents and other relevant documents after the stipulated time for retention of documents after the applicant's invalidment in accordance with rules and regulations on the subject. That apart, no meaningful medical document or opinion of the Medical Board, has been produced by the applicant, to substantiate his claim. From the documents submitted by applicant in the OA it is not possible to come to any firm conclusion as to what was the status of the disease from which he was suffering at the time of his invalidment. Additionally in the absence of medical board proceedings we are unable to know the reasons as to why the medical board decided to declare the disease as neither attributable to nor aggravated by service. Therefore, we are not in a position to verify the factual details as to what was the exact nature of disability suffered by applicant, the disability percentage and the reasons for the medical board declaring the disability as neither attributable to nor aggravated by service. During the hearing, the learned counsel for the applicant stated that even if the records have been weeded out, the claim of disability pension cannot be

rejected. We do not agree with that contention. Disability pension is not meant for every disability which a soldier has: it is meant for only that disability which is attributable to or aggravated by military service. The opinion of the medical board in deciding attributability/aggravation to military service is the most important factor in deciding eligibility to disability pension. Hence in the absence of medical board, no decision on disability pension can be taken in vacuum.

9. In this regard, it would be appropriate to refer to the judgment of the Delhi High Court in a similar case i.e. **Shri Deo Prakash Vs. Union of India and others [W.P.(C) No.6141 of 1999]** decided on 15.02.2008, wherein the Court held that if the record was destroyed, it cannot be said that there was any wrong by the respondents. The entries in the Long Rolls are required to be preserved permanently. The requirement is to record date and cause of becoming non-effective, but such entries in the discharge book are not primary evidence and do not reflect medical details required for a decision on granting disability pension. The primary record is not available after 25 years. The primary medical evidence related to the disability and cause of discharge

having been destroyed, the long roll is not conclusive to return a finding that the discharge of the applicant was attributable to military service.

10. Thus the contentions raised by learned counsel for the applicant for grant of disability pension, in our opinion, is misconceived for the reason that the statutory provision contained in Para 173 of the Pension Regulations for the Army is mandatory and cannot be ignored while deciding the issue. It was incumbent upon the applicant to produce the medical board's opinion to indicate that the disability was attributable to military service. There is no substantive evidence to establish the cause of disability and the related factor of attributability to military service. Therefore, the judgments relied upon by the learned counsel for the applicant, have no relevance, so far as this case is concerned.

11. As regards the inordinate delay, in **C. Jacob Vs. Director of Geology and Mining' and another reported in [(2008) 10 SCC 115]**, the Hon'ble Supreme Court held that *"a dead or stale claim is not permitted to be revived. The person who sleeps over his right is not entitled for any indulgence"*. Further, the Hon'ble High Court of Judicature

at Allahabad vide their order dated 04.08.2004 in the case of **Inderpal Singh Vs. UoI and Others [Civil Misc. Writ Petition No. 8524 of 2000]**, had dismissed the petition holding that the petitioner himself was not interested in pursuing the matter and kept silent for 11 years. Consequently, the appeal filed by the petitioner was wholly belated and the delay could not be condoned merely because the petitioner woke up after 11 years.

12. Additionally, the law on the importance of the opinion of a Medical Board has been well settled by the Hon'ble Supreme Court. While pronouncing judgment in the case of **Union of India & Another Vs. Ex Rfn Ravinder Kumar [Civil Appeal No. 1837/2009]**, the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that opinion of Medical Board should not be over-ruled by the courts unless there is a very strong medical evidence to do so. Relevant part of the above judgment reads as 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 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 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."

13. Thus, in this case the disability pension has been denied and the applicant himself stated that the disease was considered as neither attributable to nor aggravated by military service by the medical board. Therefore, after a huge delay of about 47 years when the medical board proceedings and service documents have already been destroyed, it is not possible for us to overturn the opinion of medical board without understanding the reasons as to why the medical board had declared the disease as neither attributable to nor aggravated by service. Thus it is not possible for us give any opinion in vacuum. In this context, it will be relevant to refer to the recent order of Hon'ble High Court of Delhi dated 08.09.2020 in **Ex JWO Kewal Krishan Vij Vs. Union of India & Ors. [W.P. (C) No. 6093/2020]** wherein the High Court has dealt with the issue of belated claim of disability pension after the medical records were weeded out as per the extant rules. The petitioner in this case had challenged the

dismissal order passed by the Tribunal on 17.03.2020 in O.A. No. 1051 of 2018. In this regard, Para 16 of the order of the Hon'ble High Court upholding the order passed by the Tribunal reads as under :

"16. As far as the contention of the counsel for the petitioner, the petitioner being entitled to equality with Dharamvir Singh supra and Ex Gunner Vasant Mokashi supra is concerned, we have already hereinabove held the petitioner to be not similarly placed as Dharamvir Singh supra. As far as the aspect of delay is concerned, no doubt in Ex-Gunner Vasant Mokashi supra, the AFT condoned the said delay confining the claim for arrears to three years preceding the filing of the petition but from a reading of the order, it appears that there was no serious opposition thereto inasmuch as there is no discussion on the said aspect. On the contrary, the petition filed by the petitioner before the AFT was opposed, by filing a reply including on the ground of delay. 'The order of condonation of delay is a discretionary order and exercise of discretion to condone the delay in one case in which there is no or not much opposition, does not form a precedent for condonation of delay in another case, though generally, same parameters have to be applied by the Court in all cases. However, in exercise of jurisdiction under Article 226 of the Constitution of India, it cannot be said that the discretion exercised by the AFT in the impugned order, to not condone the delay of 38 years, has been exercised illegally or perversely, to invite interference by this Court. The claim for disability pension cannot be equated to a claim for pay/emoluments in accordance with Rules or claim for other recurring payments which if not in

accordance with law or contract can be claimed at any time. Disability pension, though payable month-by-month, payment thereof is dependent on a finding of disability attributable to Or aggravated by service and in the absence of a finding of disability attributable to or aggravated by service, there can be no claim for disability pension; such finding is a finding of fact and not of law or contract, claim wherefor even if highly belated can be made at any time and granted with arrears for the period within limitation; on the contrary finding, even if erroneous, of "no disability attributable to or aggravated by service" if not challenged within reasonable time attains finality and a claim for disability pension cannot be made at any time, after decades, claiming the same to be a recurring payment. The counsel for the petitioner is misapplying Tarsem Singh supra."

14. In the present case, the applicant has failed to show any sufficient cause for the huge delay of about 47 years and in the absence of any sufficient cause, the same cannot be allowed. Even the Hon'ble Supreme Court has laid down guiding principles for courts to consider while examining cases for condonation of delay by stating the "*adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.*" and "*If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a*

result of his acting vigilantly.” Also, “The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed to totally unfettered free play.” Thus, the petition deserves to be dismissed on this count alone.

15. In view of the aforesaid facts and circumstances and also the guidelines laid down by the Hon'ble Supreme Court and the High Court, we are of the opinion that medical documents of the applicant have been destroyed after the prescribed retention period after following due process of law hence in the absence of the relevant material and documents, no decision can be taken in vacuum on attributability or aggravation of the disability without perusing the reasons based on which the original medical board had decided to consider the disability as 'Neither attributable to nor aggravated by military service' (NANA). Moreover, it is evident that no sufficient explanation for condonation of inordinate delay has been adduced and hence, condonation of delay cannot be accepted as a matter of right or equity and in the absence thereof, as detailed hereinabove, we are not in a position to show any indulgence in the matter.

16. Accordingly, the OA is dismissed. However, there shall be no order as to costs.

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

Pronounced in open Court on this 10 day of May, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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