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

OA 470/2021 WITH MA 543/2021

Ex PO (WTR) S.S. Mahendra Kumar ..... Applicant
VERSUS
Union of India & Ors ..... Respondents

For Applicant : Mr. Shakti Chand Jaidwal, Advocate
For Respondents : Mr. Avdhesh Kr. Singh, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA seeking grant of disability pension and in para 8 the reliefs claimed are as under:

> *"(a) Call for records of the applicant and after perusal thereof set aside the impugned order dated 22.01.2021 passed by the respondents rejecting claim of the applicant for grant of disability pension as time barred;*
>
> *(b) Direct the respondents to treat disability of the applicant namely, CARDIAC ARRYTHMIA VENTRICULAR PREM ATURE CONTRACTION" as attributable to service, since the RMB has already conceded the same as attributable to service;*
>
> *(c) Direct the respondents to grant disability pension to the applicant at least @ 20% for life w.e.f. 01.01.1986 as degree of his disablement because of the said disability has been assessed @ 20% ore more for life by the RMB;*
>
> *(d) Direct the respondents to pay disability pension to the applicant at enhanced rate of 50% for life w.e.f. 01.01.1986 by broad banding applicant's disability from 20% to 50% as per Govt Policy dated 31.01.2001;*
>
> *(e) Direct the respondents to pay to the applicant an interest @ 10% p.a. on arrears of the disability pension w.e.f. 01.01.1986 and/or"*

2. The applicant was enrolled in the Indian Navy on 24th December, 1975 and it is his contention that he was found absolutely fit in all respects at the time of his appointment. On completion of his training, the applicant completed his ten years of engagement and was discharged from service after completion of tenure of ten years on 31st December, 1985. He was not given any further engagement or re-engagement. It is the contention of the applicant that the RMB which conducted his medical examination on discharge in December1985 found him suffering from the ailment of "*CARDIAC ARRYTHMIA VENTRICULAR PREM ATURE CONTRACTION*" and the disability was assessed at 20% for life. It was held neither attributable to nor aggravated by service and, according to the applicant, it was indicated as constitutional in nature. However, the applicant, after he was discharged in the year 1985, contends that at the time of discharge he was put in the low medical category and, therefore, further engagement was not given to him after his discharge on 31st December, 1985. According to the applicant he sought for grant of disability pension sometime in 1985. The applicant, after his discharge from service, seems to have kept quiet over the matter and his claim was rejected by the competent authority on 20th August, 1987 **(Annexure A-5)** on the ground that the ailment is not attributable to military service, the conditions for grant of disability are not fulfilled and the attributability was

assessed less than 20%. It seems that the applicant kept quiet from 1987 to 2019 and it was only on 21st November, 2019 **(Annexure A-7)** that he submitted an application under the Right to Information Act to supply him all the medical documents including the RMB proceedings for claiming the benefit of disability. Vide letter dated 9th December, 2019, the Competent Authority under the Right to Information Act informed the applicant that the documents sought for by him cannot be granted to him on account of the fact that he was discharged from Naval service in December 1985 and the medical records of an ex soldier who is discharged in low medical category are maintained only for a period of ten years from the date of discharge and in accordance to the policy issued by the Integrated Head Quarters MoD (Navy) on 8th December, 2009 as the applicant is claiming medical documents and information of a period 33 years vintage, the same cannot be supplied to him as none of these documents are available. Inter alia contending that the ailment of the applicant was attributable to Military Service and it has got connection to his Military Service, this application has been filed by the applicant and placing reliance on various judgments of the Hon'ble Supreme Court including the judgment in the case of ***Dharamvir Singh*** Vs. ***Union of India and Ors.*** [(2013) 7 SCC 316], it is said that when the applicant entered the service he was hale and hearty and when he contracted the disease, at the

time of discharge, the disease is attributable to and aggravated by the conditions of service. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***Union of India and Ors.*** Vs. ***Tarsem Singh*** [(2008) 8 SCC 648], it is argued that as entitlement to receive pension is a recurring cause of action, there is no delay in filing of the OA. Inter alia contending that the applicant sustained the ailment because of the stress and strain of service and placing reliance on another judgment of the Hon'ble Supreme Court in the case of ***Union of India and Anr.*** Vs. ***Rajbir Singh*** (Civil Appeal No.2904/2011) decided on 13th February, 2015 claims disability pension and its element.

3. There being a delay of more than 33 years, the applicant has filed MA 543/2021 under Section 22 of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 11686 days in filing the OA. In the application seeking condonation of delay, the applicant has not given any reason nor has explained the delay of 11686 days. The applicant admits that his claim for grant of disability was rejected on 28th July, 1987 and he filed the OA on 24th February, 2021 after his application under the Right to Information Act was rejected in December 2019. From the averments made in the application for condonation of delay it is clear that the applicant has not given any cogent reason or justification for the inordinate delay of 33 years.

4. Respondents, on being noticed, have filed a detailed counter affidavit and argued that now after 35 years none of the medical records or records of the applicant are available. Only in the discharge letter issued to him, it is mentioned that the applicant has been discharged in low medical category and was suffering from *CARDIAC ARRYTHMIA VENTRICULAR PREM ATURE CONTRACTION* which is indicated as a constitutional ailment. Respondents further submit on affidavit that in accordance to the rules applicable, the documents of discharge including the medical records are retained only for a period of ten years. In the case of the applicant after his discharge on 31st December, 1985, the entire records have been destroyed, no records are available and, therefore, they are unable to produce the records and demonstrate from medical records that the applicant's ailment is neither attributable to nor aggravated by Military Service. On the contrary, they rely on the discharge certificate to say that it is indicated in the discharge certificate that the ailment is neither attributable to nor aggravated by Military Service and even in the order rejecting the appeal of the applicant the same is indicated. Accordingly, the respondents take serious objection to the inordinate unexplained delay caused by the applicant and express their inability to contest the matter and demonstrate before this Court that the applicant is not entitled to any benefit after a period of 35 years. They also submit that the Hon'ble Supreme

Court in the case of ***Union of India*** Vs. ***V. Damodaran AV*** (SLP (C) No.23727/2008) and the Kerala High Court in the case of ***Union of India*** Vs. ***Sreekumar P*** (Writ Appeal No.1071/1997 [OP No.18002/1993]) have consistently held that opinions and assessments made by the Competent Expert Body like the Medical Board are conclusive evidence and they cannot be interfered with and the scope of judicial review, unless and until there are material to show that the medical opinion is not technically viable or contrary to set principles of medical opinion It is the case of the respondents that now after a period of more than 34 years, indulgence in the matter cannot be made out, particularly when the respondents are handicapped in demonstrating before this Tribunal through medical evidence that the ailment of the applicant has got no connection with Military Service and is not a result of Military Service as it is neither attributable to nor aggravated by Military Service.

5. We have heard learned counsel for the parties at length and find that there is no material available on record to assess the medical documents, evaluate them and come to a conclusion as to whether the medical documents and the medical history and the opinion of the medical experts meets the requirement of law for the purpose of granting disability pension or disability element of compensation to the applicant. On the contrary, the records indicate that the applicant invoked the jurisdiction of this

Tribunal after more than 33 years of his discharge and the delay of 11686 days has not been properly explained by the applicant in his application (MA 543/2021) for condonation of delay. The applicant wants that the impugned order passed on 22nd January, 2021, be set aside and terms it as the starting point for limitation. However, a perusal of the impugned order passed in the matter indicates that the applicant was released from service on 31st December, 1985, he filed the first appeal beyond the period of five years prescribed for filing an appeal and in the orders passed under the Right to Information Act it has been conveyed to the applicant that the respondents are unable to furnish or provide to him the medical documents as the entire record has been destroyed after a period of ten years after his discharge in the year 1985. It was informed to the applicant on 9th December, 2019 that the documents which are of 33 years vintage are not available.

6. The applicant's counsel placing reliance on the law laid down by the Hon'ble Supreme Court in the case of ***Tersem Singh*** (supra) tried to argue that grant of disability pension to the applicant is a continuous recurring cause which occurs every month when he is entitled to disability pension and, therefore, in such cases the claim cannot be dismissed on the ground of delay and latches or limitation.

7. In our considered view the right of the applicant to claim disability pension is dependent upon adjudication of the primary dispute as to whether the disability which was contracted by the applicant and detected at the time of discharge in 1985 was attributable to Military Service had any causal connection with his Military service or was aggravated because of Military service. It is only after analyzing and determining the aforesaid issue that the question of entitlement of the applicant to disability element of compensation can be decided and it is only when the applicant is held entitled to disability element that disability often follows as a consequential relief not otherwise.

8. That being so, as on date in the absence of there being any material to adjudicate the primary question with regard to attributability or aggravatibility of the disability being decided, the secondary issue of grant of disability pension cannot arise and when the documents and relevant material and medical board proceedings are not available to decide the primary question of disability, the secondary question which is ancillary to and dependent upon the first question of disability cannot be adjudicated. The applicant himself is to be blamed for having slept over the matter right from 1985 up to 2019 when he for the first time sought the medical documents under the Right to Information Act. We are handicapped in adjudicating the main dispute between the parties with regard to attributability of

disability, its causal connection to Military Service and its aggravation, if any, on account of Military Service, we, therefore, cannot interfere into the matter and grant any relief to the applicant. The applicant slept over the matter for more than 33 years as a result of which all relevant material based on which his claim could be adjudicated have been destroyed and no more available, therefore, on this ground alone both the OA and MA deserves to be and are accordingly dismissed.

9. No order as to costs.

Pronounced in open Court on this 29 day of August, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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