

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

7.

OA 2951/2025 WITH MA 4277/2025

Ex Nk (TS) Hari Chand		Applicant
Versus		
Union of India & Ors.		Respondents
For Applicant	:	Mr. J P Sharma, Advocate
For Respondents	:	Mr. R.S. Chillar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (A)

ORDER
24.09.2025

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred as AFT Act, 2007), the applicant has filed this application and seeks quashing of the impugned order dated 17.07.2025 (Annexure A-1).

2. A perusal of the impugned order goes to show that it is not an order but is a reply to the legal notice sent by the applicant's counsel, namely, Mr. J.P Sharma and Mr. Sahil Sharma. Respondents have raised a preliminary objection with regard to the delay in filing of this OA and further contended that in the light of the inordinate delay which is not explained properly in the application filed vide MA

No.4277/2025 under Section 22 of the AFT Act, 2007, the OA is liable to be dismissed.

3. Learned counsel for the applicant, however, argued that as the applicant is praying for grant of disability benefit and disability pension which is a continuous right recurring cause of action which occurs every month when the pension is denied to him in view of the law laid down by the Hon'ble Supreme Court in the case of Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the application cannot be dismissed on the ground of delay.

4. A perusal of the records indicates that the applicant was enrolled in the Indian Army as a Driver MT on 13.05.1983 and after serving for 17 years and 19 days, he was discharged from service on 31.05.2000 under Army Rule 13 (3) item III (i) on account of being in the Low Medical Category (LMC). The applicant is getting service pension as is evident from the PPO issued on 19.01.2000 vide Annexure A-3. However, after his discharge and when the pensionary benefits were granted to him, the applicant submitted that he was suffering from "RETRO PURITANICAL FIBROSIS BILATERAL URETERIC OBSTRUCTION (OPTD) 591" on 27.12.1996 at Army Hospital, Delhi Cantt because of which he was downgraded in the LMC and ultimately

discharged from service with the aforesaid ailment as can be seen from the Release Medical Board proceedings (RMB) held at Base Hospital, Delhi Cantt on 25.10.1999.

5. It is the case of the applicant that after his discharge, his claim for grant of disability element of pension was processed by the PCDA (P), Prayagraj, which was rejected on 24.10.2000. The applicant submitted 1st Appeal to the Competent Authority which was rejected on 26.06.2001. Against the said rejection, the applicant preferred a 2nd Appeal which was also rejected on 07.08.2002 and thereafter, from 07.08.2002 up to 19.03.2025, i.e., for a period of 23 years, the applicant kept quiet over the matter and then he approached his counsel and sent a legal notice on 19.03.2025 and this Legal Notice having been replied on 17.07.2025 vide Annexure A-1, the applicant has approached this Tribunal.

6. It is the case of the respondents that the applicant was enrolled on 13.05.1983 and was discharged on 31.05.2000 on account of being in the LMC (Permanent) because of the ailment. The RMB held the disability to be neither attributable to nor aggravated by military service (NANA). According to the respondents, now, after a period of more than 25 years, the entire medical records of the applicant have been

destroyed, nothing is available with them and, therefore, the application cannot be entertained. It is the case of the respondents that the ailment of the applicant "RETRO PURITANICAL FIBROSIS BILATERAL URETERIC OBSTRUCTION (OPTD) 591" was a congenial ailment and since it was NANA, the benefit of disability pension cannot be granted to the applicant.

7. Having heard learned counsel for the parties and on perusal of the records, we find that there is a delay of about 23 years in approaching this Tribunal. In the application for condonation of delay filed by the applicant, in Para 1, the applicant spoke about the impugned order (Annexure A-1), i.e., reply to the Legal Notice. In Para 2, he spoke about the RMB conducted at Base Hospital, Delhi Cantt on 25.10.1999 and in Para 3, the fact about rejection of his claim for grant of disability element of pension on the ground that the ailment was NANA. The applicant, in Para 4, submitted that the ailment of "RETRO PURITANICAL FIBROSIS BILATERAL URETERIC OBSTRUCTION (OPTD) 591" has increased and he is facing problem, therefore, wants disability element of pension. The applicant relies upon various judgements to say that the delay in filing of the OA, i.e., 7628 days should be condoned.

8. The issue before this Tribunal is as to whether the delay in question can be condoned and whether it is a fit case where disability pension can be granted to the applicant?

9. Admittedly, after his discharge on 31.05.2000 and after his claim for disability pension was rejected in the year 07.08.2002, for about 23 years, the applicant kept quiet in the matter, did not raise any claim for grant of disability pension primarily on account of the fact that the disability "RETRO PURITANICAL FIBROSIS BILATERAL URETERIC OBSTRUCTION (OPTD) 591" was nothing but a development of a lump in a part of his body which on account of certain physiological and constitutional ailment has nothing to do with the service rendered by the applicant. In the proceedings of Invalidating Medical Board held in the Base Hospital, it is clearly indicated that the ailment is unconnected with the service in the Army. Even though, the applicant has filed a photocopy of the Medical Board proceedings vide Annexure A-6, in Column No.5 of Part III of the Medical Board Proceedings, there is a reference to the Specialist's opinion with regard to the further treatment of the applicant. This Specialist's opinion is not available on record and according to the respondents, the records of the applicant have been destroyed and not available in the

Records Office in view of the provisions of Regulation 595 of Regulation for the Army (Revised Edition) 1987.

10. That apart, we find that the applicant has slept over the matter for more than 23 years and then approached his counsel and served a legal notice. After reply to the legal notice was submitted, he has invoked the jurisdiction of this Tribunal. The question is as to whether now at this stage can the delay for which there is no satisfactory explanation be condoned and benefit can be granted to the applicant.

11. For assessing the medical claim of the applicant with regard to the disability and to record a finding as to whether the disability of the applicant is attributable to or aggravated by military service, except for the Medical Board proceedings of the applicant filed as Annexure A-6, nothing is available on record based on which a finding can be recorded with regard to the attributability and aggravation of the disease. The specialist report and other documents are not available and the applicant himself has produced documents which go to show that he was advised to undergo surgery for removal of the Fibrosis but he refused to undergo the operation. The Medical Board proceedings further indicate that the applicant is unable to perform Army duty but is fit for civil and other sedentary duties.

12. In the absence of medical documents, this Court is handicapped in assessing the claim of the applicant and to record a finding as to whether the so called "RETRO PURITANICAL FIBROSIS BILATERAL URETERIC OBSTRUCTION (OPTD) 591" ailment of the applicant is attributable to or aggravated by military service. There is nothing on record to record a finding in this regard and the act of the applicant for sleeping over his right for more than 23 years comes in the way of this Tribunal in deciding the issue.

13. So far as the contention of the applicant that pension is a continuous right and in the light of the law laid down by the Hon'ble Supreme Court in the case of *Tarsem Singh* (supra), the delay is liable to be continued is concerned, the applicant is already in receipt of service pension for the service rendered by him but for grant of disability pension, a finding has to be recorded and at the very first instance on inquiry as to whether the disability of the applicant because of which he was discharged from service arose due to military service rendered by him and whether it is attributable to or aggravated by military service, it is only when a finding in this regard is recorded by this Tribunal based on the medical evidence and medical records that the

consequential relief of pension can be granted to the applicant. In a case of claim for disability pension and grant of pension for disability is a consequential relief which can be granted only if the disability is recorded and held to be attributable to or aggravated by military service. At the very first instance, this Tribunal is required to record a positive finding that the disability of the applicant arose because of military service and is attributable to and aggravated by military service. In the absence of medical evidence and medical records, this finding cannot be recorded. On account of inordinate delay and destruction of records by the office of the respondents and when finding on this issue cannot be recorded, the consequential benefit of pension cannot be granted.

14. That being so, judgement of the Hon'ble Supreme Court in the case of *Tarsem Singh* (supra) will not help the applicant as the right of the applicant for receiving pension has to be adjudicated in the matter and it cannot be adjudicated in isolation without adjudicating the first moot question, i.e., whether the disability is attributable to and aggravated by military service. In the application for condonation of delay, the applicant has not given any cogent

reason or justification for the 23 years delay in approaching this Tribunal.

15. Taking note of all these circumstances, we are unable to adjudicate the issue in question as the delay occasioned at the instance of the applicant of 23 years has resulted in all records being destroyed and due to non-availability of the same, we are handicapped in dealing with the issue.

16. Accordingly, finding no case for interference into the matter, the OA stands dismissed both on the ground of merit and delay.

17. MA 4277/2025 and OA 2951/2025 stand disposed of.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[LT GEN SHASHANK SHEKHAR MISHRA]
MEMBER (A)

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