

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

100.

OA 1155/2023 WITH MA 1784/2023

Ex LAC Mahesh Chand	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant : Mr. Ravi Kumar, Advocate
For Respondents : Mr. R.S. Chhillar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
22.01.2025

MA 1784/2023

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgment of the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371] and for the reasons mentioned in the application, the delay in filing the OA is condoned. The MA is disposed of accordingly.

OA 1155/2023

2. By way this application filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant prays for the following reliefs:

“(a) To direct the respondents to grant disability pension (service element + disability element) @ 100% for lifelong along with all consequential benefits and with the arrears & interest @ 12%

p.a. wef date of discharge by treating disabilities as attributable to and aggravated by military service.

- (b) To direct the respondents to grant invalid pension along with all consequential benefits and with the arrears & interest @ 12% p.a. wef date of discharge.*
- (c) To direct the respondents the constant attendant allowance (CAA) from the date of invalidation.*
- (d) To direct the respondents to issue ECHS card for self and spouse to enable the applicant to avail the benefit of Ex-serviceman Contributory Health Scheme.*
- (e) To pass such orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."*

3. The case, in nutshell, of the applicant is that after thorough examination, on 24th February, 1975, he was enrolled in the Indian Air Force in sound physical and mental condition. On 16th January, 1980 while travelling from his village to the bus stop for resuming his duties after availing leave, the applicant fell from a bullock cart and sustained severe injuries resulting in Fracture of D12 Vertebra with Paraplegia. The applicant was treated at Base Hospital, Delhi, CH Lucknow and also at Pune Kirki. When there was no improvement in his condition even after long treatment for one year, as contended, the specialist medical officer concluded that there was no likelihood of the applicant improving any further and, therefore, declared that the applicant had become 100% disabled and it was specifically mentioned in the IMB that the applicant required a whole time attendant and was unfit for civil employment. It is further submitted that there has been no improvement in the medical condition of the applicant for the last 43 years and he needs at least support of two persons even to sit in the wheel chair. The applicant, as

stated, was quite young when he suffered the disability and is leading a life on the mercy of others with no means of survival and for want of money is facing difficulty in getting the medical treatment which is a whole life affair. It is further averred that after invalidation from service the applicant has not been provided with ECHS card so as to enable him to take treatment from the military hospital. To substantiate his claim on the ground that he was on official duty when he sustained the injuries, the applicant has placed reliance on Rules 12 and 13 of Entitlement Rules for Casualty Pensionary Awards 1982 and also the order passed by AFT, Regional Bench, Lucknow in the case of Ex Hav Ram Prasad Singh Vs. Union of India and Ors. (OA 552/2021) dated 21st March, 2022. The applicant has also placed reliance on the judgment of the Hon'ble Supreme Court in the case of Dharamvir Singh Vs. Union of India and Ors. [2013 (7) SCC 36] with regard to attributability and aggravation of the disease by military service for grant of disability pension. Further reliance is placed on the judgment of Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Rajbir Singh (CA 2904/2011) decided on 13.02.2015 to state that any disease which led to armed forces personnel's discharge or death will ordinarily be deemed to have arisen in service if no note of its existence at the time of entry into military service is made. The applicant has also submitted that the appeal cum legal notice sent on 18th October, 2022 for grant of disability pension was not disposed of by the Competent Authority till filing of this OA. It is,

therefore, pleaded on behalf of the applicant that in view of the above submissions, the OA may be allowed.

4. On the other hand learned counsel for the respondents has contended that except the Long Roll having minimum information, all other service and medical records of the applicant have been destroyed after being retained for the period stipulated in the Regulations for Indian Air Force 1964. It is submitted that on the claim of the applicant for disability pension having been rejected, he was paid the Invalid Gratuity of Rs.2330.90 vide GTS/AF/CELL/82/DLS/181/I dated 25th June, 1984 as is evident from the Long Roll. It is further submitted that as the claim of the applicant is barred by limitation, in the absence of valid service and medical records, the veracity of the claim, at this late stage, cannot be examined in true spirit thus he is not entitled to any relief claimed. Still further the contention of the respondents is that as per Rule 153 of Pension Regulations for the Indian Air Force 1961 (Part-I) disability pension may be granted to an individual who is invalided out from service on account of the disability being assessed at 20% or more and attributable to or aggravated by military service. Since in the present case the disability of the applicant has been declared as NANA, the applicant is not entitled to the relief claimed on this count as well. Respondents also seek dismissal of the OA on the ground of jurisdiction. The judgments relied on by the applicant, as submitted by the respondents, are

distinguishable both on facts and circumstances and are, therefore, not applicable in the case of the applicant.

5. We have heard counsel of the parties and have also perused the documents available on record. The facts, to the extent that the applicant was enrolled into the Indian Air Force on 24th February, 1975 and invalided out of service on 6th February, 1982 with disability “Fracture D12 Vertebra with Paraplegia” assessed at 100% for life and unfit for civil employment, are not disputed.

6. So far as denial of benefit on the ground of destruction of service and medical record is concerned, we find on record a copy of the Long Roll (Annexure A-4) placed by learned counsel for the applicant which, in our opinion, is sufficient enough to decide the claim of the applicant. The destruction of records, may be as per Rules, cannot become a hurdle in the grant of relief claimed in this OA.

7. As regards the delay in filing the OA is concerned, this issue has already been settled by the Hon^{ble} Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371] and we have already allowed the MA 1784/2023 seeking condonation of delay in filing the OA.

8. The issue as to whether the OA can be entertained at the Principal Bench of the AFT has been decided by the Larger Bench of this Tribunal in the case of Capt G. Vivekanand Vs. Union of India and Ors. (OA

460/2015) on 11th September, 2015. Relevant part of para 71 of the judgment read thus:

“71..... the litigant has choice to choose any of the Benches in accordance with Rule 6 of the Rules of 2008 and the Bench has no jurisdiction in the name of exercise of discretion or forum conveniens to refuse to entertain the lis brought before the Bench on the ground of discretion of forum conveniens. This position of the law is same for application under Section 14 or it may under Section 15 of the AFT Act 2007, as for both, the same Rule 6 is applicable.”

9. The next question whether the disability suffered by the applicant which resulted in his invalidation is attributable to or aggravated by military service has been answered by the Hon’ble Supreme Court in the case of *Dharamvir Singh Vs Union of India and Ors.* [(2013) 7 SCC 316].

Relevant para of the judgment reads as under:

“31. In the present case it is undisputed that no note of any disease has been recorded at the time of the appellant’s acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In the absence of any note in the service record at the time of acceptance of joining of the appellant, it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service.....”

It is accordingly held that since the disability occurred during service and there being no record of any note to the contrary, the applicant is entitled to grant of invalid pension with effect from the date of his invalidment.

10. The question 'whether the applicant can be taken to be on duty at the time when he fell from the bullock cart while returning to resume duty after availing leave' has been answered by the Hon'ble Supreme Court in the case of Madan Singh Shekhawat Vs. Union of India and Ors. [(1999) 6 SCC 459] and it is held that the period while proceeding on leave or returning from leave to join duty shall be counted as duty. Rule 12 A (d) and (e) of the Entitlement Rules for Casualty Pensionary Awards 1982 (Air Force), which are relevant for our purpose, read as under:

" DUTY

12. A. A person subject to disciplinary code of the Armed Forces is on "duty"

(d) When proceeding from his duty station to his leave station or returning to duty from his leave station, provided entitled to travel at public expenses i.e. on railway warrants, on concessional voucher, on cash TA (irrespective of whether railway warrant/cash TA is admitted for the whole journey or for a portion only), in government transport or when road mileage is paid/payable for journey.

(e) When journeying by a reasonable route from one's quarter to and back from the appointed place of duty, under organized arrangements or by a private conveyance when a person is entitled to use service transport but that transport is not available."

11. The point in issue in this OA is also covered by the judgments dated 07.07.2023 of this Tribunal in the cases of Lt. A.K. Thapa Vs. Union of India & Ors. (OA No.2240/2019) and Ex Rect Chhote Lal Vs. Union of India & Ors. (OA No.368/2021) dated 11.03.2022.

12. It is essential to observe that the documents available on record and also admitted by the respondents themselves categorically indicate that the applicant was invalided out of service on 6th February, 1982 with the disability "Fracture D12 Vertebra with Paraplegia" assessed at 100% for life and unfit for civil employment. (Annexure A-3) The applicant, invalided out of service at a very young age of 23 years and 100% disabled, as is evident from Invalidate Medical Board proceedings, had been living without any source of income on the mercy of his relatives therefore, in addition to the invalid pension, he is also entitled to grant of Constant Attendance Allowance (CAA) as well.

13. Resultantly, the OA deserves to be allowed, hence allowed. The applicant is thus held entitled to grant of Invalid Pension with all consequential benefits and Constant Attendance Allowance (CAA) from the date of invalidment from service. Further on the applicant's depositing necessary contribution to avail-medical benefits, an ECHS card shall be provided to him as per Rules.

14. The respondents are thus directed to calculate, sanction and issue necessary PPO to the applicant together with the amount of arrears within a period of three months failing which the applicant shall be

entitled to interest @6% p.a. from the date of receipt of a copy of this order till payment. However, since there is a long delay on the part of the applicant in approaching this Tribunal, in view of the judgment of the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371] the arrears of invalid pension are restricted to three years prior to the date of filing of this OA on 24th April, 2023.

15. The OA is accordingly allowed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[RASIKA CHAUBE]
MEMBER (A)

/vks/