

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

OA No. 1940 of 2020 WITH MA 2248/2020

Ex LME Nahar Singh

..... **Applicant**

Versus

Union of India & Others

..... **Respondents**

For Applicant : Mr. Shakti Chand Jaidwal,
Advocate

For Respondents : Mr. Satya Ranjan Swain,
Advocate

CORAM:

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

ORDER

MA 2248 of 2020

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007, seeking condonation of delay of 15764 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of Union of India v. Tarsem Singh [2009 (1) AISLJ 371] and in Ex Sep Chain Singh v. Union of India & Ors. (Civil Appeal No. 30073/2017) and the reasons mentioned, the MA 2248 of 2020 is allowed and the delay of 15764 days in

filing the OA is thus allowed. The MA is disposed of accordingly.

OA 1940/2020

1. Invoking the jurisdiction of this 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) Call for records of the Applicant and after perusal thereof, set aside the impugned order dated 17.06.1975 passed by the Respondents (CDA), rejecting claim of the Applicant for grant of disability pension considering his disability as NANA;

(b) Direct the respondents to treat disability of the Applicant, namely "CONGENITAL RUDIANTARY LEFT KIDNEY EFFECTS OF ICD Y-34 (753)" as aggravated by stress and strain of Naval Service, since the RMB has already conceded the same as aggravated by prolonged stress and strain of afloat service;

(c) Direct the respondents to grant disability pension to the applicant @ 30% for life w.e.f. 12.10.1974, as degree of his disablement because of the said disability has been assessed composite @ 30% 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. 12.10.1974 by broad-

banding applicant's disability from 30% to 50% as per Govt. Policy dated 31.01.2001;
(e) Direct respondents to pay to the applicant an interest @ 10% p.a. on arrears of the disability pension w.e.f. 12.10.1974 and/or;
(f) Issue such order(s)/direction(s) as may be deemed appropriate in the facts and circumstances of the case.

BRIEF FACTS

2. The applicant was enrolled in the Indian Navy on 11.06.1963 under the BOY ENTRY SCHEME (BES) initially for 10 years of active service and subsequently for 10 years for fleet reserve service, upon requirement. The applicant was discharged from the Naval service on 31.10.1974 after having served around 11 years 04 months and 20 days. At the time of release, the applicant was placed in permanent Low Medical Category (LMC) BEE(P) for his disability '**CONGENITAL RUDIMENTARY LEFT KIDNEY EFFECTS OF ICD. Y-34 (753)**' which was assessed by the RMB vide AFMSF-16 dated 21.08.1974 as 'aggravated @ 30% for life' due to prolonged stress and strain of military service.

3. The initial claim of the applicant for the grant of disability pension was forwarded to the competent authority

i.e., CDA (Pensions), Allahabad vide letter No. DP/D/I/89042/III dated 04.04.1975 (annexed as *Annexure R-3*), however, the same was rejected by the CDA (Pensions) vide letter No. G-3/75/2122/III dated 17.06.1975 (annexed as *Annexure R-4*) stating that the disease of the applicant is not attributable to military service and that it existed prior to the individual's military service.

4. The applicant preferred first appeal dated 08.12.1975 against the initial rejection for the grant of disability pension which was rejected by the respondents vide their GoI-MoD letter no. 410031/R.60/D (Pen.A) dated 03.09.1976 (annexed as *Annexure R-6*).

5. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA for consideration.

CONTENTIONS OF THE PARTIES

6. The learned counsel for the applicant submitted that the Applicant was enrolled in the Indian Navy on 11.06.1963 in Boy Entry Scheme for 10 years of active service and 10 years of fleet reserve service and due to the disease/disability

CONGENITAL RUDIMENTARY LEFT KIDNEY EFFECTS OF

ICD. Y-34 (753) was released from service on being found medically unfit in LMC BEE(P) permanent on 31.10.1974.

7. The learned counsel for the applicant 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], that after thorough medical examination the applicant was enrolled into military service and there was no note of any disability recorded in his service records, and therefore, any disability occurring during the period of his service is deemed to be attributable to or aggravated by military service.

8. The learned counsel for the applicant also placed reliance on the decision of the Hon'ble Supreme Court in **Civil Appeal No. 164/1993 decided on 14.01.1993 titled Ex Sapper Mohinder Singh v. UOI & Ors.** wherein the Hon'ble Supreme Court had held that "*...findings of the medical board which had examined the appellant should be respected until a fresh medical board examines and comes to a different conclusion.*" The learned counsel for the applicant further contended that since the RMB had conceded the disease of the applicant as aggravated due to Naval Service, the CDA

(Pension) being a non-medical entity cannot sit over the finding of the RMB vide AFMSF-16 dated 21.08.1974.

9. The learned counsel also placed reliance on the judgment of the Hon'ble Supreme Court in **UOI v. Rajbir Singh (Civil Appeal No. 2904/2011)** whereby it was held that the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service.

10. *Per contra*, the learned counsel for the respondents submitted that the applicant was discharged from service after expiry of engagement on completion of 11 years 04 months and 20 days of Naval service on 31.10.1974 and the cause of discharge of the applicant is '**engagement expired**' as per the service certificate annexed as Annexure R-1 to the counter affidavit filed on 05.06.2023 and accordingly the applicant was not drafted to reserved fleet as there was no such requirement arose at that time.

11. The learned counsel for the respondents submitted that since the applicant had not completed 15 years of qualifying service, he is not eligible for the grant of service pension as per

Regulation 78 of the Navy Pension Regulations, 1964.
Regulation 78 of the Navy Pension Regulations, 1964 states to
the effect:

***“78. Minimum qualifying service for pension. –
Unless otherwise provided, the minimum service
which qualifies for service pensions is fifteen
years.”***

and therefore OA deserves to be rejected.

ANALYSIS

12. We have heard the learned counsel for the parties at length and have gone through the records produced before us. After perusal of the records produced and arguments advanced, we find that it is an undisputed fact that the applicant was discharged from service after completion of 11 years 04 months and 20 days of military service. *Prima facie*, it is also observed that the applicant had suffered with the disease **‘CONGENITAL RUDIMENTARY LEFT KIDNEY EFFECTS OF ICD. Y-34 (753)’** during the service and the disease of the applicant got aggravated due to service conditions and the said position is affirmed by the respondents

in their RMB dated 21.08.1974 (annexed as 'Annexure A-3 colly' to the OA).

13. Since the disease of the applicant has already been assessed as aggravated by the military service at @ 20% for life, it is essential to advert to Para 105-B of the Navy (Pension) Regulations, 1964 (hereinafter 'the Navy Regulations'). Para 105-B of the Navy Regulations states to the effect: -

"105-B. disability at the time of discharge. - (1) A sailor, who is discharged from service after he has completed that period of his engagement and is, at the time of discharge found to be suffering from a disability attributable to or aggravated by naval service may at the discretion of the competent authority be granted in addition to the service pension admissible, a disability element as if he has been discharged on account of that disability.

(2) The disability element of pension will be assessed on the accepted degree of disablement at the time of retirement or discharge on the basis of the rank held on the date on which they would or injury was sustained or in case of a disease on the date of the first removal from duty on account of that disease.

(3) The provisions in sub-regulations (1) and (2) shall also apply to sailors discharged from service on completion of the period of their engagement and who have earned only a service gratuity."

14. The applicant vide the prayers made in the OA is seeking for the grant of disability pension, i.e., disability

element along with the service element of pension, therefore, it is essential to advert to Para 78 of the Navy Regulations, 1964. Para 78 of the Navy Regulations provides to the effect: -

“78. Minimum qualifying service for pension. – Unless otherwise provided, the minimum service which qualifies for service pensions is fifteen years.”

15. It is also required to be considered that in the instant case the applicant was discharged from the service after completing the initial period of his engagement i.e., 10 years and not because of him being in LMC due to the disease **‘CONGENITAL RUDIMENTARY LEFT KIDNEY EFFECTS OF ICD. Y-34 (753)’**, therefore the applicant cannot be deemed to be invalided out from service. It is pertinent to note that the applicant was not discharged from the service on medical grounds, but was discharged after completion of his initial terms of engagement, therefore the applicant in accordance with Regulation 105-B (supra) of the Navy Regulations will only be eligible for the grant of disability element of pension only and not the service element of pension as per Regulation 107 of the Navy Regulations. Regulation 107 of the Navy Regulations states to the effect:

107. Amount of disability pension. – In case where the accepted degree of disablement is twenty per cent, or over, the monthly rates of disability pension consisting of service and disability elements, shall be as follows, namely.

(1) Service element.

(a) Where the individual has rendered sufficient service to qualify for a service pension.	Service pension admissible in accordance with is rank and group last held, and length of service.
(b) Where the individual has not rendered sufficient service to qualify for service pension.	(i) If the disability was sustained while on flying or parachute jumping duty in an aircraft or while being carried on duty in an aircraft under proper authority the minimum service pension appropriate to his rank and group. (ii) In all other cases, that proportion of the minimum service pension appropriate to the individual's rank and group which the number of his completed years of qualifying
	service bears to fifteen but in no case less than two-thirds of the minimum service pension.

Provided that for the purpose of this clause, service rendered before the age of seventeen years shall be treated a qualifying service.

Explanation. The service elements shall be assessed-

- (i) In the case of ordinary seaman or equivalent, on the basis of the minimum service pension laid down for able seaman or equivalent of the same group.
- (ii) In the case of Artificers V Class on the basis of minimum service pension laid down for Leading Seaman or equivalent in Group b.
- (iii) In the case of Artificer acting IV Class, on the basis of the minimum service pension laid down for Group A.

x
x
x"

16. Regulation 78 (supra) of the Navy Regulations provide for the criteria of minimum qualifying service for earning service pension. As per Regulation 78, the minimum qualifying service for earning service pension is 15 years. In the instant

case, the applicant was enrolled into the Naval Service under the BOY ENTRY SCHEME (BES) scheme/entry and the initial terms of engagement of the applicant was 10 years. Further extension of the service in fleet reserve for 10 years is subject to the requirement of the Indian Navy and cannot be sought at own request of the individual. The applicant was not granted extension and was discharged from service under the clause 'engagement expired' and not because of his Low Medical Category. It is pertinent to that the RMB of the applicant was not conducted solely on the medical grounds. Regulation 107(b) of the Navy Regulations provide for the grant of service element of pension as per sliding scale for the cases in which 15 years of minimum qualifying service is not completed. However, same will not be applicable to the facts of the present application as Regulation 107 is applicable to the cases where an individual was ought to serve for a minimum period of 15 years for earning service pension and the individual gets discharged before 15 years of service on being invalided out on medical grounds and the rule of sliding scale of pro rata pension i.e., Regulation 107(1)(b) of the Navy Regulations comes into consideration. Therefore, the applicant cannot be

granted the pro rata service element of disability pension as per Regn. 107(1)(b) of the Navy Regulations as the applicant was not supposed to serve till 15 years, as his initial terms of engagement was for 10 years only.

17. Since the applicant had retired from the military service after having served around 11 years 04 months and 20 days, the applicant is not fulfilling the criteria of minimum period of qualifying service for the grant of service element of pension, which is 15 years, as enumerated under Para 78 of the Navy Regulations, therefore, the applicant is not entitled for the grant of service element of pension as the length of service is less than 15 years.

18. Since the applicant had rendered 11 years 04 months and 20 days of military service, it is essential to advert to Regulation 88 of the Navy Regulations. Regulation 88 of the Navy Regulations states to the effect:

“88. Minimum qualifying service for gratuity. – Unless otherwise provided, the minimum service which qualifies for service gratuity is five years.”

Regulation 88 provides for the grant of service gratuity to the sailors who had rendered minimum service of 05 years and in

the present case, the applicant is qualified to earn service gratuity as per Regulation 88. Therefore, as per Regulation 88 of the Navy Regulations, the applicant is held entitled for the grant of Service Gratuity as per the rate as specified under Regulation 89 of the Navy Regulations which states to the effect:

“89. Rate of service gratuity. – (1) Service gratuity at the rate of two-thirds of a month’s pay for each completed year of qualifying service may be granted to a sailor with less than fifteen years qualifying service, who is compulsorily discharged with eligibility to gratuity or who is discharged on the ground that his services are no longer required or who is discharged otherwise than at his own request having reached the stage at which discharge may be enforced : Provided that the competent authority may, depending on the circumstances of the case, reduce the gratuity by an amount not exceeding one fourth of the admissible (2) No gratuity shall be admissible to a sailor who is discharged at his own request.”

19. Since the applicant had retired, on completion of initial terms of engagement, after completing 11 years 04 months and 20 days of military service, in LMC, with disease

‘CONGENITAL RUDIMENTARY LEFT KIDNEY EFFECTS OF

ICD. Y-34 (753)' which has already been assessed as aggravated at @ 30% by the military service, the applicant would also be eligible for the grant of disability element of pension only, in view of Regulation 105-B(1) of the Navy Regulations, 1964.

CONCLUSION

20. In view of the above analysis, the applicant is held entitled for the grant of disability element of disability pension for the disease '**CONGENITAL RUDIMENTARY LEFT KIDNEY EFFECTS OF ICD. Y-34 (753)**', w.e.f. the next day of the date of his discharge, i.e., 01.11.1974, at 30% for life which is directed to be rounded off to 50% for life in terms of the judgment of the Hon'ble Supreme Court in the case of **Union of India v. Ram Avtar** (Civil Appeal No. 418/2012) decided on 10.12.2014. The applicant is also held entitled for the grant of service gratuity in view of the analysis in the preceding Para 18, and be paid within 03 months from the date of this order if not already paid.

21. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period

of three months from the date of receipt of copy of this order and the amount of arrears of the disability element of the disability pension shall be restricted to commence to run from a period of 03 (three) years prior to the date of filing of the present OA i.e., 07.12.2020, and shall be paid by the respondents, failing which the applicant shall also be entitled for interest at @ 8% p.a. after the expiry of 3 months on the unpaid amount from the date of receipt of copy of this order by the respondents.

22. Consequently, Miscellaneous Application(s) if any, stand disposed off accordingly.

Pronounced in the open Court on this ^H4 day of November, 2025.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

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