

ISSUE

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

OA No. 2986 of 2024 with MA 3327 of 2024

Ex EAR-3 Ghanshyam Yadav

...Applicant

Versus

Union of India & Others

.... Respondents

For Applicant:

Mr. Ved Prakash, Advocate

For Respondents:

Mr. Rajeev Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

MA 3327 of 2024

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007, seeking condonation of delay of 4162 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** (2008) 8 SCC 648 and in **Ex Sep Chain Singh v. Union of India & Ors.** (Civil Appeal No. 30073/2017) and the reasons mentioned, the MA 3327 of 2024 is allowed and the delay of 4162 days in filing the OA

2986/2024 is thus allowed. The MA is disposed off accordingly.

OA 2986 of 2024

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 are read as under:

“(a) Direct the respondents to issue PPO of disability pension w.e.f. from the date of discharge with all consequential benefits with immediate effect; or

(b) Direct the respondents to pay arrears with interest @ 12% from his retirement;

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favor of the applicant.

BRIEF FACTS

2. The applicant was recruited in the Indian Navy on 02.08.2000 and was discharged from service, on completion of initial terms of engagement, in Low Medical Category (LMC) on 31.08.2010 after having served around 10 years and 29 days of military service.

3. The applicant suffered with the disease '**SEIZURE DISORDER (Deopathic GTCS) ICD No. G-40.6**' 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 letter dated 26.08.2010 (annexed as '*Annexure A-2*' to the OA).

4. The initial claim of the applicant for the grant of disability pension was forwarded by the Naval Pension Office to PCDA (Navy) Mumbai vide letter dated 26.08.2010 (Annexure A-2) to process the claim of the applicant for grant of disability pension, however, the applicant did not receive any PPO thereafter.

5. The applicant made a representation dated 02.11.2020 to the Naval Pension Office, Mumbai, along with necessary documents, for the grant of disability pension, however, the claim of the applicant was still under process till the filing of this OA as filed on 24.07.2024.

6. Aggrieved by the actions 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.

CONTENTIONS OF THE PARTIES

7. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Navy on 02.08.2000 and was discharged from service, on completion of initial terms of engagement, in Low Medical Category (LMC) due to the disability '**SEIZURE DISORDER (Deopathic GTCS) ICD No. G-40.6**' on 31.08.2010 after having served around 10 years and 29 days of military service.

8. The learned counsel for the applicant submitted that the disability of the applicant was assessed as aggravated by military service at @ 20% by the Release Medical Board (RMB). The learned counsel further submitted that the initial claim for the grant of disability pension was neither rejected nor processed by the respondents despite the disease of the applicant being assessed as 'Aggravated by military service' at @ 20%.

9. The learned counsel for the applicant further submitted that the applicant registered a request with Navpen helpdesk and vide representation dated 02.11.2020 (annexure A-4 to the OA) forwarded the bank details along with the requisite

documents required for processing the claim of disability pension but to no avail.

10. The learned counsel for the applicant further submitted that the applicant, due to inaction of the respondents, had filed multiple representations dated 27.07.2021 and 17.09.2021 to expedite the processing of the claim of disability pension.

11. The learned counsel for the applicant further submitted that the applicant received communication letters from PCDA (Navy), Mumbai, and, Naval Pension Office, Mumbai, dated 26.07.2021 and 26.10.2021 respectively, asking the applicant to obtain 'time-barred sanction/reason' for delay of 11 years in submission of his case. The applicant in reply to the same submitted delay explanation on 01.11.2021.

12. The learned counsel for the applicant further submitted that the explanation for delay given by the applicant was forwarded to the CNS (for PCDA), New Delhi, vide letter dated 20.01.2022, which was replied by the respondents vide their letter dated 08.03.2022, stating that it is a time-barred case and there is no policy to give time-barred sanction for processing initial claim for grant of disability pension claim.

13. It is further submitted by the learned counsel for the applicant that the applicant had filed an RTI application dated 01.05.2024 (annexed as 'Annexure A-11' to the OA) vide which the applicant had sought the status of process for the claim of disability pension and it was informed that the case was taken up by the Ministry of Defence (MoD) for time-barred sanction on 30.08.2022 and is pending with the MoD.

ANALYSIS

14. 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 10 years and 29 days of military service. *Prima facie*, it is also observed that the applicant had suffered with the disease **'SEIZURE DISORDER (Deopathic GTCS) ICD No. G-40.6'** 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 letter dated 26.08.2010 (annexed as 'Annexure A-2' to the OA).

15. 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."

16. 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.”

17. 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 **‘SEIZURE DISORDER (Deopathic GTCS) ICD No. G-40.6’**, therefore the applicant cannot be deemed to be invalidated 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 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:

P.T.O.

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.

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x
x"

18. 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 Direct Entry Diploma Holder (DEDH) scheme/entry and the initial terms of engagement of the applicant was 10 years. Therefore, under no circumstances the applicant could have served for more than 10 years or up to 15 years unless any extension was sought by the applicant and approved by the Navy. Regulation 107 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) 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 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.

19. Since the applicant had retired from the military service after having served around 10 years and 29 days, the applicant is not fulfilling the criteria of minimum period of qualifying service for the grant of service 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.

20. Since the applicant had rendered 10 years and 29 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.”

21. Since the applicant had retired, on completion of initial terms of engagement, after completing 10 years and 29 days of military service, in LMC, with disease **‘SEIZURE DISORDER (Deopathic GTCS) ICD No. G-40.6’** which has already been assessed as aggravated at @ 20% 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 of the Navy Regulations, 1964.

CONCLUSION

22. In view of the above analysis, the applicant is held entitled for the grant of disability element of disability pension for the disease '**SEIZURE DISORDER (Deopathic GTCS) ICD No. G-40.6**', w.e.f. the next day of the date of his discharge, i.e., 01.09.2010, at 20% 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 20, and be paid within 03 months from the date of this order if not already paid.

23. 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., 24.07.2024, and shall be paid by the respondents, failing which the applicant will be entitled for

interest at @ 8% p.a. from the date of receipt of copy of this order by the respondents.

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

Pronounced in the open Court on this 3rd day of September, 2025.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

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