

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

110.

OA 1107/2023 with MA 1709/2023

Ex Capt SM Deshmukh (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. K R Verma, Advocate
For Respondents : Mr. K K Tyagi, Sr CGSC

CORAM

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

ORDER
03.03.2026

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 the applicant calls in question the action of the respondents in denying him disability pension after his release from service on 04.01.1969 i.e. more than 53 years, 09 months and 16 days ago. The applicant claims disability pension on the ground that the representations and claims submitted by him for grant of invalid/disability pension were rejected by the respondents through the impugned order dated 16.03.2017 (Annexure A1).

2. The brief facts indicate that the applicant was commissioned as a Second Lieutenant in the Army Ordnance Corps on 11.06.1961. After completing his training at the Indian Military Academy, Dehradun he served in various postings. In January 1967 he was posted to 18 FAD, Dasuya (Field Area), after completing the ATO Course at AOC School,

Jabalpur. Shortly thereafter during the period June to July 1968 the applicant was found to be suffering from “Grand Mal Seizure” also known as “Epilepsy”. He was initially treated at Military Hospital, Jalandhar and in July 1968 he was transferred to Army Hospital, Delhi Cantt. for further treatment. Subsequently he was invalidated out of service on medical grounds on 03.01.1969. The applicant rendered a total service of 07 years, 06 months and 22 days and therefore did not qualify for service pension as he was invalidated out on medical grounds before completing the minimum qualifying service. It is the case of the applicant that a Release Medical Board was held at Army Hospital, Delhi Cantt. on 20.11.1968 prior to his discharge wherein he was declared unfit for further military duties and the Medical Board recommended his invalidation from service. The recommendation of the Medical Board and the consequent release were approved by the higher military authorities. Accordingly the applicant was discharged by the Military Secretary Branch at Army Headquarters on 03.01.1969 and thereafter sent home. According to the applicant no relevant documentation was provided to him at the time of his discharge and he was not supplied with any records relating to the proceedings of the Medical Board or other documents concerning his invalidation. As per the pleadings of the applicant from 03.01.1969 until the year 2015 he did not initiate any action regarding the matter and the Army Headquarters also did not process any claim for grant of benefits in his favour. However, sometime in the year 2015, he was informed by

certain individuals known to him about the judgment of the Hon'ble Supreme Court in Union of India & Others v. Dharamvir Singh (2013) 7 SCC 316 concerning the grant of disability pension. Thereafter for the first time after his discharge he submitted a representation in the year 2016 seeking grant of disability pension vide letter dated 08.04.2016. Several correspondences thereafter took place between the authorities. Ultimately by the impugned, vide communication dated 16.03.2017 the Army Headquarters informed the applicant regarding the rejection of his representation. The communication dated 16.03.2017 reads as under:

“1. Please refer to your petition dated 14 Feb 2017 addressed to Hon'ble Defence Minister of India.

2. It is intimated that as per available records, you were commissioned on 11 Jun 1961 (PRC) and released from service due to prolonged sickness. You Service Records have already been weeded out after expiry of the prescribed retention period in terms of para 619 (c) of Regulation for the Army 1987 (Revised Edition). It is not feasible to examine/process your request due to non availability of medical documents.

3. In view of above, you are advised to submit all available medical documents, if held with you, for examination by the Competent Authority.”

(Emphasis Supplied)

It is further the case of the applicant that he has submitted various documents along with this application and has also filed MA No. 1709/2023 an application for condonation of delay under Section 22 of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 53 years, 09 months and 16 days. Placing reliance on various judgments of

the Hon'ble Supreme Court annexed along with the petition the applicant contends that the claim relates to a continuing cause of action, as he has been continuously deprived of disability pension. It is further contended that the relevant documents were never supplied to him at the time of discharge. Therefore, asserting that the right to disability pension is a continuing right and relying particularly upon the judgment of the Hon'ble Supreme Court in Union of India & Others v. Tarsem Singh (2008) 8 SCC 648, the applicant seeks grant of disability pension.

3. Learned counsel appearing for the applicant argued before us that merely on the ground of delay the claim for invalid pension or disability pension cannot be denied. It is submitted that the disability occurred during the course of military service and therefore the applicant is entitled to the benefit claimed in the present application.

4. The respondents have filed a detailed counter affidavit. They admit that the applicant was commissioned as a Second Lieutenant in the Army Ordnance Corps on 11.06.1961 and that he served for 07 years, 06 months and 22 days. It is also admitted that on account of "Grand Mal Seizure" also known as "Epilepsy", the applicant was invalidated out of service on 03.01.1969. However, it is stated by the respondents that the applicant raised his claim for the first time through the then Defence Minister in the year 2016. After examination of the matter, the claim was considered and by communication dated 16.03.2017 the applicant was informed that his claim could not be processed due to non-availability of

the relevant medical documents. The respondents have submitted that on account of the lapse of a considerable period of time and the non-availability of medical records, the claim of the applicant could not be processed. They further point out that as per the statutory provisions contained in Regulation 619(c) of the Regulations for the Army, 1987 (Revised Edition), the service records of the applicant had been destroyed after the expiry of the prescribed retention period of 25 years. As no relevant records were available, the claim of the applicant could not be processed. According to the respondents, the matter was also examined by the Principal Controller of Defence Accounts (Pensions), who informed that as per the pension records available the applicant was neither discharged on account of a disability held to be attributable to or aggravated by military service. It is further stated that the applicant had not submitted any first appeal, second appeal or representation after his discharge in January 1969 until 08.04.2016. Therefore, due to non-availability of records the respondents have expressed their inability to furnish any detailed reply on merits. The respondents further submit that as per the policy applicable in cases of disablement, the applicant never submitted any first appeal or second appeal after his invalidation from service. They point out that due to non-availability of medical documents it is not feasible to process the applicant's claim. Regulation 48 of the Pension Regulations for the Army, 1961 contemplates that disability pension is admissible where a Medical Board assesses the disability at 20% or more

and holds the disability to be attributable to or aggravated by military service.

It is the case of the respondents that in the absence of the proceedings of the Release Medical Board or any other medical documents relating to the applicant's ailment, it cannot be determined whether the disability was attributable to or aggravated by military service. Consequently, the respondents submit that they are unable to process the claim of the applicant. The respondents have also referred to Paragraph 33 of Chapter I of GMO 2008 which contemplates confirmation by the Medical Board, particularly in cases relating to field areas for processing disability claims. In the absence of such documentation, according to the respondents, the claim of the applicant cannot be properly scrutinized or established.

5. Having heard the learned counsel for the parties, the foremost question warranting consideration is whether the delay of more than 53 years, 09 months and 16 days in invoking the jurisdiction of this Tribunal deserves to be condoned in the peculiar facts and circumstances of the case.

6. According to the applicant's own pleadings, both in the application filed under Section 14 of the Armed Forces Tribunal Act, 2007 and in the application for condonation of delay filed under Section 22 of the Armed Forces Tribunal Act, 2007, it is admitted that after his discharge on 03.01.1969 the applicant remained silent and did not take any action for about 53 years. It was only in early 2015 as per the applicant's own case

that certain persons known to him informed him about the judgment of the Hon'ble Supreme Court relating to the grant of disability pension. Thereafter for the first time he submitted a representation to the Hon'ble Minister of Defence on 08.04.2016. The documents placed on record by the applicant himself indicate that thereafter the respondents processed his claim. The order of invalidation dated 03.01.1969 produced by the applicant shows that he was invalidated out of service based on the proceedings of the Medical Board held at Army Hospital, Delhi Cantt. on 20.11.1968 and that the competent authority had accepted the recommendation of the Medical Board and approved his discharge. However, no other documents are available on record thereafter. When the applicant approached the Defence Minister vide Annexure A4, the matter was processed by the authorities and it was found that no records were available regarding the applicant's invalidation. The proceedings of the Medical Board were also not available. It has been stated that in accordance with Regulation 619(c) of the Regulations for the Army, 1987 the relevant documents had been destroyed after expiry of the prescribed retention period. It is further evident that the applicant has not furnished any explanation whatsoever for the inordinate delay caused by him from 03.01.1969 to 08.04.2016 in raising a claim or challenging his invalidation. For the entire period from 03.01.1969 to 08.04.2016 the applicant remained inactive and slept over the matter. When eventually he submitted a representation to the Defence Minister on 08.04.2016, the

records show that his claim was examined but could not be established due to non-availability of the relevant medical documents and service records. Admittedly, the applicant had rendered a total service of 07 years, 06 months and 22 days and therefore he was not entitled to any service pension. He would have been entitled to invalid pension or disability pension only if it had been established that his discharge was on account of a disease or ailment which was attributable to or aggravated by military service. In this regard, the proceedings of the Release Medical Board held on 20.11.1968 at Army Hospital, Delhi Cantt. constituted the most crucial and important document on the basis of which the cause and nature of his invalidation could have been determined. However, the said document is also not available.

7. The provisions of Section 22 of the Armed Forces Tribunal Act, 2007 are akin to Section 5 of the Limitation Act and this Tribunal can condone delay in approaching it only if a reasonable explanation for the delay is furnished, which is the cardinal principle underlying Section 5 of the Limitation Act. For invoking the jurisdiction of this Tribunal under Section 22(1)(a), the aggrieved person is required to make a representation within six months from the date of the final order. If the representation is not decided within a further period of six months, the applicant may wait for a maximum period of three years and thereafter invoke the jurisdiction of this Tribunal.

8. In the present case, however, the applicant slept over the matter for more than fifty years and raised a representation only in the year 2016 by which time the relevant records had already been destroyed in accordance with the prescribed retention policy. The power to condone delay can be exercised by this Tribunal only if it is satisfied that the applicant had sufficient cause for not filing the application within the period prescribed under Section 22 of the AFT Act. In the present case, the applicant has not offered any reasonable justification or explanation which prevented him from ventilating his grievance from 03.01.1969 until 08.04.2016. The only explanation offered by the applicant is that he became aware of certain judgments of the Hon'ble Supreme Court in the year 2015, following which he made a representation to the Defence Minister. In our considered view, this explanation does not constitute sufficient cause or reasonable justification for condoning an inordinate and unexplained delay of 53 years, 09 months and 16 days. Prima facie, therefore, this is not a fit case where such an extraordinary delay deserves to be condoned.

9. Apart from the above, the contention of the applicant based on the law laid down by the Hon'ble Supreme Court in Tarsem Singh (supra) namely that pension is a continuing right and that a claim for pension cannot be rejected merely on the ground of delay except, that, with respect to arrears, may, appear attractive at a first glance but is wholly unsustainable in the facts and circumstances of the present case. Disability pension is not an automatic or unconditional right. It is governed by

specific statutory provisions and regulations, including the Entitlement Rules for Casualty Pensionary Awards, the Pension Regulations for the Army, 1961 and the General Medical Order, 2008 (Para 33, Chapter VI). These provisions stipulate pre-conditions for grant of disability pension, the existence of a Medical Board report establishing the disability and confirming whether the disease or ailment was attributable to or aggravated by military service. Therefore, in order to evaluate a claim for disability pension, the relevant rules and regulations require the availability of medical evidence and records demonstrating that the disease or ailment suffered by the individual had a causal connection with military service and that the disability was attributable to or aggravated by such service. Only when these factual aspects are established on the basis of medical records can the existence of disability, its extent and its attributability or aggravability be assessed and determined. Depending upon such findings, the benefit of disability pension may thereafter be granted. In such circumstances, the contention of the applicant that pension is a continuous legal right cannot apply in cases relating to disability arising out of military service. For grant of disability pension, the primary condition that must be satisfied is that the disability which resulted in the applicant's discharge or invalidation must be shown through medical records to have a causal connection with military service and has to be attributable to or aggravated by such service. Had the applicant raised this claim within the period during which the records are

preserved i.e. within the retention period of 25 years, the medical records could have been examined and a finding could have been recorded regarding the cause of his disability. Once such a factual aspect is established, the consequential benefit of pension, which is dependent upon existence of a disability due to Military Service could have been considered. Since pension in such cases is merely a consequential benefit or right arising from the existence of a disability attributable to or aggravated by military service, the principle laid down in Tarsem Singh (supra) cannot be applied in such case, where the issues of existence of disability itself is not establish. The inordinate delay of more than 53 years in raising the grievance has created a situation where no medical evidence, records or documents are now available to examine the applicant's case and determine the cause of the disability or its connection with military service. Therefore, even if pension may be regarded as a continuing right in certain circumstances, the fundamental requirement for a claim for disability pension is to establish the existence of a disability, its causal connection with military service. Until and unless this fundamental requirement is established the consequential relief of (disability pension) cannot be granted. Since the essential issue of disability itself cannot be adjudicated due to absence of records, the contention that disability pension is a continuing right and cannot be denied on the ground of delay cannot be accepted.

10. The conduct of the applicant in sleeping over his alleged rights for an extraordinarily long period of more than 53 years has resulted in a situation where the relevant medical records required for adjudication of the claim of disability are no longer available before this Tribunal. Accordingly in the facts and circumstances of the case we find that no case is made out for condonation of delay and further hold that in the absence of the necessary medical records the claim of the applicant cannot be adjudicated on merits.

11. The OA is therefore dismissed.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

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