

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

OA 2487/2023 with MA 3542/2023

Ex Sgt Daya Shankar Kushwaha ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Ravi Kumar, Advocate  
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

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

ORDER  
06.04.2026

Invoking the jurisdiction of this Tribunal under Section 14 of the AFT Act, 2007, the applicant has filed this Original Application claiming disability element of pension and the relief claimed in para 8 reads as under:-

*“(a) To direct the respondents to grant the disability element of pension @20% broad banded to 50% for life in view of the Hon’ble Apex Court Judgment in Rajbir Singh (Supra) and Dharamvir Singh (Supra) by treating the disabilities as attributable and aggravated to Military service.*

*(b) To direct the respondents to grant the disability element of pension @ 20% for lifelong, broad-banded to 50%, along with all consequential benefits and with the arrears & interest @12% p.a. w.e.f. date of discharge, by treating disease as attributable to and aggravated by military service.*

*(c) To pass such orders, direction/directions as this Hon’ble Tribunal may deem fit and proper in accordance with law.”*

2. There being an inordinate delay of 12246 days i.e. more than 33 years, the applicant has filed MA No.3542/2023 for condonation of delay. Respondents have filed their objections to the condonation of delay application as well as to the OA on merits.

3. We have heard learned counsel for the parties. From the records we find that the applicant was enrolled in the Indian Air Force as a Weapon Fitter Technician on 27.02.1975. It is the case of the applicant that at the time of enrollment, he was found fit and fulfilled all the medical conditions required to be enrolled in the Indian Air Force. After completion of 15 years of service, he was discharged from service on 28.02.1990 i.e. 33 years back. At the time of discharge, he was kept in the low medical category, CEE(P).

4. It is the case of the applicant that on 09.06.1981, due to falling down from a running vehicle (Crash Fire Tender) while performing his duties, he suffered fracture of Pelvis (Ischial – Tuberosity) Lt (old) V-67, N-808, E-834. The RMB was conducted on 09.11.1989 (Annexure A-1) and the disability was assessed as 20% for two years. The applicant claims that the injury was suffered by him while on duty. He was admitted to military hospital from 09.06.1981 to 25.08.1981. He served in the low medical category for 8 years and 9 months after onset of the disability. Thereafter, he

was discharged from service and the Release Medical Board which was conducted on 09.11.1989 (Annexure-A1), had found him to be suffering from the said fracture but held the disability neither attributable to nor aggravated by military service. *Inter alia* contending that the applicant suffered the disability because of the accident, the applicant has filed this OA.

5. It is further seen from the records that after the applicant was discharged from service on 28.02.1990, he kept quiet and it was only in January 2023 that he invoked the jurisdiction of this Tribunal by filing an appeal before the Competent Authority through his counsel vide Annexure A-3. It is the contention of the applicant that his appeal was never replied or answered by the respondents, therefore, he has filed this Application.

6. In the Application for condonation of delay, i.e., MA No. 3542/2023, the applicant except for relying upon various judgments of the Hon'ble Supreme Court (referred to in paragraphs 2 to 6 of the MA) failed to furnish any cogent or satisfactory explanation for the inordinate delay. The only contention raised is that, in view of the said judgments, the delay deserves to be condoned as pension is a continuing right. Learned counsel for the applicant argued that the applicant has suffered the disability because of the accident and hence entitled to the benefit.

7. Respondents have filed a detailed counter affidavit and have objected to the delay in invoking the jurisdiction of this tribunal. They argue that after his discharge from service, the applicant kept quiet for more than 33 years and invoked the jurisdiction of this Tribunal after 33 years without any just cause or reason. They further point out that the applicant was found to be suffering from fracture of Pelvis (Ischial – Tuberosity) Lt (old) V-67, N-808, E-834 and the duration of the disability was held to be for a period of two years. The period of two years lapsed on 09.11.1991 and thereafter if the disability had continued, the applicant should have reported for conducting the Review Medical Board and in case the disability was found to be in existence, even after the period of two years, then only a right may accrue to the applicant to claim disability benefit.

8. That apart, respondents point out that the applicant suffered the injury because of his own act. It has got nothing to do with his military service and therefore, there is no merit in this Application.

9. According to the respondents, the applicant was enrolled on 27.02.1975 and was discharged from service on 28.02.1990 after completion of his fulfilling the conditions of enrolment and rendering 15 years and 2 days of regular service for which pension has been granted to him. Even though the applicant was initially placed in the low medical category CEE (Temp) (T-24), this was a

temporary disablement caused due to the Fracture of Pelvis (Ischial Tuberosity Lt.) and as is evident from the medical board proceedings, filed by the applicant himself i.e. the medical board held on 30.11.1982, the disease was for a period of two years only. The applicant has affixed his signature on the medical board proceedings thereby accepting the same.

10. It is the case of the respondents that after his discharge from service and pensionary benefits were granted to the applicant, he kept quiet for about 33 years till he filed a representation through his counsel in year 2023 and thereafter invoked the jurisdiction of this Tribunal. It is the case of the respondents that the applicant has been discharged from service on fulfilling his conditions of employment. He was never discharged on medical grounds and as far as the disability of the applicant is concerned, it is the case of the respondents that the disability did not occur during the course of employment. The applicant suffered the accident by falling from the truck and it was a temporary disablement which was cured in two years. As per the report of the medical board that the applicant never approached the authorities for reexamination through a medical board to validate the case of his disability and now after 33 years when all the records have been destroyed, there is nothing

available to hold that the applicant is still disabled and entitled to any disability benefit.

11. The respondents contend that the only available record pertaining to the applicant is his Long Roll (Annexure R-1) at page 63 of the paper book. The said document merely reflects that the applicant was discharged from service upon fulfilment of the terms and conditions of his enrolment. It further indicates that he was transferred to the reserve list for a period of two years and was granted all admissible pensionary benefits. There is nothing in the Long Roll with regard to disablement of the applicant.

12. We have heard the learned counsel for the parties and find that the applicant had suffered a fall from a vehicle on 09.06.1981, following which he was subjected to medical examination by a duly constituted Medical Board. The Medical Board examined him and the proceedings of the Medical Board filed by the applicant dated 19.09.1989 indicate that the applicant suffered a fracture of the pelvis (Ischial Tuberosity Lt.) on 09.06.1981. He was under treatment from 09.06.1981 to 25.08.1981. The cause of the injury is shown to be fall from a fire tender vehicle. However, the disability is assessed as temporary for a period of two years and it was held neither attributable nor aggravated by military service. The

applicant was released from service on completion of his tenure of employment.

13. From the record it is seen that immediately after 09.06.1981, the applicant was treated from 09.06.1981 to 25.08.1981 and there is no record available with regard to his treatment and the cause of the injury etc. as the same have been destroyed after 25 years as per the Army Regulations. The applicant has himself filed the medical record i.e. the medical assessment at the time of his release which shows that his disability was temporary for a period of two years. Thereafter, if the disability had continued, he should have reported after two years to the military hospital or the nearest hospital from his place of residence for further medical examination and if the disability still continued after two years, the applicant would have been entitled to the benefit claimed in the OA. The very fact that the applicant slept over the matter, did not raise any complaint and invoked the jurisdiction of this Tribunal after 33 years, is a clear indication that it is nothing but an after thought. The applicant has not suffered any permanent disability and is not entitled to any disability benefit or disability pension.

14. Apart from the inordinate delay caused by the applicant which has resulted in destruction of all records in the matter, the records available clearly show that the applicant was discharged after

completing his period of service and at the time of discharge, he was only suffering temporary disability i.e. a fracture which had occurred in the year 1981 and he was found disabled only for a period of two years. The applicant did not take any action to report back for any re-evaluation of his medical status after two years. On the contrary, slept over the matter and has now arisen to claim the disability benefit. The applicant was released from service even though in a low medical category but the same was temporary in nature and he was discharged not on medical grounds but on completing his tenure of engagement.

15. Keeping in view the totality of the facts and circumstances i.e the delay and the medical records available, we find no case made out for grant of any benefit to the applicant. The OA is, therefore, dismissed. There is no order as to costs.

**[JUSTICE RAJENDRA MENON]  
CHAIRPERSON**

**(RASIKA CHAUBE)  
MEMBER(A)**

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