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**COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 284/2018

**Ex ALD Nand Kishore
VERSUS
Union of India and Ors.**

..... Applicant

..... Respondents

For Applicant : Mr. Parmesh Kumar, with
Mr. Nawneet Krishna Mishra,
Advocates
For Respondents : Mr. Anil Gautam, Sr CGSC

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**HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)**

ORDER

Invoking the jurisdiction of this Tribunal; under Section 14, of the Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following reliefs:

- (a) To direct the respondents to consider and grant the applicant with 50% disability element of disability pension from the date of discharge from service i.e. 30.11.1989.**
- (b) To direct the respondents to pay arrears from the date of discharge i.e. 30.11.1989 along with interest with rounding off at 12% per annum till its payment to the applicant.**

1 of 22

(c) Pass any other or such further order or orders as deemed fit to this Hon'ble Tribunal in order to secure the ends of justice in favour of the applicant.

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 06.06.1981 and was discharged from service on 30.11.1989 under Rule 13(3) Item III (iv) of the Army Rules, 1954, at his own request on compassionate grounds, prior to completion of his terms of engagement. He had rendered 8 years, 5 months and 25 days of military service. According to the applicant, he suffered from a disability assessed at 20%, which he contends was attributable to or aggravated by military service.

3. The respondents have contested the applicant's claim on the ground that the applicant claimed pension after inordinate delay of more than 30 years and the respondents already weeded out the relevant documents of the applicant and therefore, there is no evidence or supporting medical documents before this Tribunal to show that the applicant

suffered from any disability and which could be assessed to 20% by medical officer much less to any Medical Board.

4. Learned counsel for the applicant submitted that in 1985, during Field Firing at Pokhran Range, Rajasthan, the applicant suffered a severe ear injury due to continuous tank firing while performing duties as a Gunner. He subsequently developed pus discharge and persistent hearing impairment. Despite being placed in a low medical category, he continued to be assigned duties involving firing ranges and high-noise environments, which further aggravated his condition. Owing to his deteriorating medical condition, stress, and continued deployment on incompatible duties, the applicant was compelled to seek voluntary discharge on compassionate grounds.

5. Learned counsel for the applicant submitted that the instant case is squarely covered by the judgment of Hon'ble Delhi High Court, in the case of **Mahavir Singh Narwal v. Union of India and Anr.** 111(2004] DLT 550, 2004 (74) DRJ 661, 2004 (102) FLR 330, 2005 (1) SLJ 133 Delhi, wherein it was held that merely because a person has attained discharge

on compassionate grounds although his disability has been acquired on account of stress and strain of military service will not be a ground to deny the claim of disability pension to stress his claim for grant of disability pension along with payment of arrears and interest.

6. Reliance was also placed on the decisions of this Tribunal in case of **Shri Prakash Singh (Retd.) Vs UOI & Ors.** in OA no. 84 of 2020, and in case of **Ex. POEL(P) Ajay Singh Chauhan Vs Union of India & Ors.**, in OA No 1107 of 2022, to contend that the applicant is entitled to rounded off of the disability pension assessed @ 30% to 50% for life.

7. Learned counsel for the applicant further submitted that, as per the Ministry of Defence policy letter dated 19.05.2017, disability pension is admissible even in cases of voluntary retirement. Accordingly, the applicant is fully eligible. It is stated that the applicant submitted representations dated 26.06.2017, 14.07.2017 and 27.09.2017 to the concerned Record Office and his Commanding Officer, but no response was received. Since the disability was incurred and aggravated during military service and was held attributable by the

Release Medical Board, the applicant is entitled to the disability element of disability pension.

8. Per contra, learned counsel for the respondents submitted that the applicant is a non-pensioner and that his original service records have already been destroyed after expiry of the mandatory retention period, in accordance with Paras 592 to 596 of the Defence Service Regulations for the Indian Army, 1987 (Revised). Prior to destruction of the records, all essential particulars were duly extracted and recorded in the Regimental Long Roll maintained by the Armoured Corps Records. It is further submitted that the applicant has approached this Tribunal after an unexplained delay of nearly 38 years from the date of his discharge, during which period he remained completely silent.

9. It is submitted by the respondents that a representation under the Redressal of Grievances mechanism was received by the Ministry of Defence, Department of Ex-Servicemen Welfare, vide ID No. 1742/PG/17 dated 17 July 2017. The same was duly replied to by the Armoured Corps Records through letter No. 1066798B/30/Pen dated 13 October 2017,

5 of 12

informing the applicant that all service documents had already been destroyed upon expiry of the prescribed retention period. Hence, no action could be taken at such a belated stage for grant of disability pension under the existing rules.

10. We have considered the submissions of learned counsel for both parties and carefully examined the material available on record. Counsel for the applicant has placed on record a Photostat copy of the discharge certificate, whereas the respondents have produced only the Regimental Long Roll. The discharge certificate reflects that, at the time of discharge, the applicant was placed in Low Medical Category CEE (P), and that he was discharged from service at his own request on extreme compassionate grounds. The only question that needs to be answered in this case is as to whether a decision can be taken on the attributability or aggravation of a disease as claimed by applicant for which medical board and other relevant medical documents have already been destroyed in accordance with law ?.

11. In the present case, the applicant was discharged from service at his own request on compassionate grounds on 30.11.1989, and has approached this Tribunal after an unexplained delay of more than three decades. The original service and medical records pertaining to the applicant have already been destroyed upon expiry of the statutory retention period, and only the Regimental Long Roll survives. There is no contemporaneous medical document, opinion of a Medical Board, or any other supporting record to establish that the applicant was suffering from a disability attributable to or aggravated by military service at the time of discharge, or that such disability was assessed at 20% as claimed.

12. While the discharge certificate produced by the applicant indicates that he was placed in Low Medical Category CEE (P), it does not contain any details regarding the nature, origin, assessment, or attributability of the alleged disability. In the absence of the original medical documents and the Release Medical Board proceedings, this Tribunal is unable to ascertain whether the applicant was suffering from a disability, much less whether such disability would qualify

him for the grant of disability pension under the applicable rules. The prolonged and unexplained delay of more than 30 years, coupled with the absence of essential medical and service records, renders it impossible for this Tribunal to examine or verify the applicant's claim. The settled position of law is that stale claims, more so those involving destruction of records, cannot be entertained at such a belated stage.

13. In this regard, it would be appropriate to refer to the judgment of the Delhi High Court in a similar case i.e. **Shri Deo Prakash Vs. Union of India and others** [W.P.(C) No.6141 of 1999] decided on 15.02.2008, wherein the Court held that if the record was destroyed, it cannot be said that there was any wrong by the respondents. The entries in the Long Rolls are required to be preserved permanently. The requirement is to record date and cause of becoming non-effective, but such entries in the discharge book are not primary evidence and do not reflect medical details required for a decision on granting disability pension. The primary medical record is not available after 25 years. The primary medical evidence related to the disability and cause of

discharge having been destroyed, the long rolls is not conclusive to return a finding that the discharge of the applicant was attributable to military service.

14. We are fortified in our view by order passed by this Tribunal, in OA 104/2019, in case of **Ex Rect Kundan Lal Yadav vs Union of India & Ors**, when the medical board proceedings have already been destroyed, it is not possible for us to come to the conclusion as to why the disability of the applicant was declared as neither attributable to nor aggravated by service. Thus it is not possible for us give any opinion in vacuum. In this context, it would be relevant to refer to the order of Hon'ble High Court of Delhi dated 08.09.2020 in **Ex JWO Kewal Krishan Vij Vs. Union of India & Ors**. [W.P. (C) No. 6093/2020] wherein the High Court has dealt with the issue of belated claim of disability pension after the medical records were weeded out as per the extant rules. The petitioner in that case had challenged the dismissal order passed by the Tribunal on 17.03.2020 in O.A. No. 1051 of 2018. In this regard, Para 16 of the order of the

Hon'ble High Court upholding the order passed by the Tribunal reads as under :

"16. As far as the contention of the counsel for the petitioner, the petitioner being entitled to equality with Dharamvir Singh supra and Ex Gunner Vasant Mokashi supra is concerned, we have already hereinabove held the petitioner to be not similarly placed as Dharamvir Singh supra. As far as the aspect of delay is concerned, no doubt in Ex-Gunner Vasant Mokashi supra, the AFT condoned the said delay confining the claim for arrears to three years preceding the filing of the petition but from a reading of the order, it appears that there was no serious opposition thereto inasmuch as there is no discussion on the said aspect. On the contrary, the petition filed by the petitioner before the AFT was opposed, by filing a reply including on the ground of delay. 'The order of condonation of delay is a discretionary order and exercise of discretion to condone the delay in one case in which there is no or not much opposition, does not form a precedent for condonation of delay in another case, though generally, same parameters have to be applied by the Court in all cases. However, in exercise of jurisdiction under Article 226 of the Constitution of India, it cannot be said that the discretion exercised by the AFT in the impugned order, to not condone the delay of 38 years, has been exercised illegally or perversely, to invite interference by this Court. The claim for disability pension cannot be equated to a claim for pay/emoluments in accordance with Rules or claim for other recurring payments which if not in accordance with law or contract can be claimed at any time. Disability pension, though payable month-by-

10 of 12

month, payment thereof is dependent on a finding of disability attributable to Or aggravated by service and in the absence of a finding of disability attributable to or aggravated by service, there can be no claim for disability pension; such finding is a finding of fact and not of law or contract, claim wherefor even if highly belated can be made at any time and granted with arrears for the period within limitation; on the contrary finding, even if erroneous, of "no disability attributable to or aggravated by service" if not challenged within reasonable time attains finality and a claim for disability pension cannot be made at any time, after decades, claiming the same to be a recurring payment. The counsel for the petitioner is misapplying Tarsem Singh supra."

15. In the case here, although the applicant has filed an application, but he has failed to show any cogent or sufficient cause for the huge delay of about more than 30 years and having no documents with him to substantiate his claim, thus in the absence of any sufficient cause, the same cannot be considered.

16. In view of the aforesaid facts and circumstances and also the guidelines laid down by the Hon'ble High Court as referred to above, we are of the opinion that medical documents of the applicant have been destroyed after the prescribed retention period after following due process of law hence in the absence

of the relevant material and documents, no decision can be taken in vacuum on attributability or aggravation of the disability without perusing the reasons based on which the disability was considered as 'Neither attributable to nor aggravated by military service' (NANA). Moreover, it is evident that no sufficient or satisfactory application for condonation of the inordinate delay of more than 30 years has been filed and hence, delay of more than 30 years cannot be accepted as a matter of right or equity and in the absence thereof, as detailed hereinabove, we are not in a position to show any indulgence in the matter.

17. Accordingly, the Original Application stands dismissed on delay as well as on merits. However, there shall be no order as to costs.

Pronounced in the open Court on this 15th day of January, 2026.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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12 of 12