

**ARMED FORCES TRIBUNAL
REGIONAL BENCH
JABALPUR**

18 July, 2023

CORAM :

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN GOPAL R, MEMBER (A)**

13.

OA 21/2021 with MA 50/2021

**No. 1056571, Ex Swr/Dvr Gorade Sahebrao Yeshwantha,
S/o Late Shri Yeshwantha Gorade,
C/o Katanga Colony, Near Shiv Mandir,
Ward No. 8, Jabalpur (M.P.).**

.....Applicant

Versus

- 1. Union of India,**
Through the Secretary,
MoD, GoI, New Delhi.
- 2. COAS,**
IHQ of MoD (Army),
DHQ PO, New Delhi.
- 3. The OIC**
Armoured Corps Records,
Ahmednagar (Maharashtra).
- 4. The PCDA(P)**
Druapadi Ghat, Allahabad (U.P.).

.....Respondents

For Applicant : Mr KC Ghildiyal, Sr. Advocate with
Mr HC Singh and Mr Maneesh Kholia, Advocates

For Respondents : Mr Aakash Malpani, Advocate holding brief of
Mr. HS Ruprah, CGSC

ORDER

1. The applicant had been enrolled in the Army on 20.11.1975 and invalided on medical grounds on 28.04.1977. It has been stated by the Counsel for the Applicant that the individual was invalided out on account of mental illness and had been informed regarding entitlement for disability pension.
2. The OA had been filed after a lapse of more than 44 years. As per the Counsel for the Applicant, the onset of the disease was during service, as the same did not exist prior entering service and should have been held attributable/aggravated by service conditions. If the Medical Board had recommended for invaliding out from service on medical grounds, the disability would have been above 20% and if it was assessed at less than 20%, the discharge was contrary to provisions of Para 143 of Regulations for the Army. Hence, the applicant was entitled to disability pension which has been denied illegally. In support of the claim of disability pension, copy of Discharge Book had been produced. A perusal of same reveals that the applicant had been invalided on medical grounds.
3. The Respondents submit that the service documents of the applicant have already been weeded out on expiry of retention period in accordance with Para 595 (a) (i) of Regulation for the Army 1987 – Volume II, being a non-pensioner. The details of the applicant maintained in the Long Roll Register contains only general information. In the absence of relevant medical documents, the respondents are not able to ascertain the medical assessment/opinion endorsed in the Invaliding Medical Board. In the absence of records being available, the respondents submit that they are unable to verify the correctness of the Discharge Book. The claim of the applicant being grossly time barred needs to be dismissed on account of delay and laches.
4. Heard both the parties.

5. We observe that the applicant has created a situation by sleeping over his rights for a long period of time i.e., four decades before preferring the claim. By this belated claim, the applicant is placing the respondents in a disadvantageous situation, especially when all records including medical documents have been destroyed as per relevant regulations. It is *sine qua non* that in cases relating to medical disability, there is a need for a determinable and verifiable document. The belated claim attracts the doctrine of Delay and Laches.

6. However, sympathetic we may be, sitting as a Tribunal we cannot grant relief claimed for, in the absence of relevant determinable and verifiable documents coupled with the unreasonable delay.

7. The OA is **dismissed**. No order as to costs.

(LT GEN GOPAL R)
MEMBER (A)

(JUSTICE RAJENDRA MENON)
CHAIRPERSON