COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

02.

OA 927/2018 WITH MA 798/2018

Ex Sep Puran ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Anil Kumar Gautam Sr CGSC

CORAM

HON'BLE MR.JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT. GEN. P.M. HARIZ, MEMBER (A)

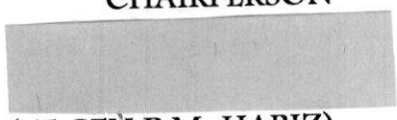
ORDER
06.01.2023

Vide our detailed order of even date, we have dismissed the main OA 927/2018. Faced with this situation, learned counsel for the applicant makes an oral prayer for grant of leave for impugning the order of the Tribunal to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the applicant and going through our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order rendered by

the Tribunal, therefore, prayer for grant of leave to appeal stands dismissed.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON



(LT GEN P.M. HARIZ)
MEMBER (A)

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O.A No. 927 of 2018
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Ex Sep Puran ..... **Applicant**
Versus
Union of India and others ..... **Respondents**

For Applicant : Mr. V.S. Kadian, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

O R D E R

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by a soldier who retired in 1954 and is aggrieved by the fact that he has not been granted any invalid disability pension on being invalided out from service having completed 03 years, 06 months and 18 days of service. He has made the following prayers:

> (a) Quash and set aside impugned letter No 1237/DP/RA/JR dated 17.08.2016;

(b) Direct respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability pension with the benefits of broad banding;

(c) Direct respondents to grant invalid/service element of disability pension to the applicant;

(d) Direct respondents to pay the due arrears of disability pension/invalid pension/service element with interest @ 12% per annum from the date of discharge with all the consequential benefits; and

(e) 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 favour of the applicant.

Brief Facts of the Case:

2. The brief facts of the case, as per the applicant, are that he was enrolled in the Indian Army on 22.01.1951 and was invalided out from service on 08.09.1954 being a low medical category after completion of 03 years, 06 months and 18 days. He was suffering from the disability "Hypermetropia, Amblyopia (RE) and Trachioma" which, as per him, was assessed at 20%. However, since the Release Medical Board (RMB) has assessed the disability as neither attributable to nor aggravated by military service, he was denied disability pension.

His case for disability pension was processed with PCDA (P) Allahabad which rejected his claim vide letter dated 05.03.1955. It is the applicant's case that he was not supplied with a copy of the medical documents/invalidation medical board. The applicant, subsequently, served a legal notice-cum-representation through his Counsel which was replied by the Records of the JAT Regiment Centre vide their letter dated 17.08.2016 (Annexure A-1 Impugned Order). The respondents whilst replying to his legal notice-cum-representation had also intimated that the Sheet Roll along with all service and medical documents had already been destroyed after expiry of retention period, as given in Para 595 of the Regulations for the Army. It is the applicant's case that he is entitled to disability pension as he was discharged with a disability which he suffered whilst in service and is also entitled to the benefit of "rounding off" in terms of Govt. of India, Ministry of Defence (MoD) letter dated 31.01.2001 and in the light of the Apex Court judgment in *Union of India and Others v. Ram Avtar* (Civil Appeal No.418/2012).

Arguments by the Counsel for the Applicant:

3. The counsel for the applicant took us through the details of the case and stated that it has been intimated by the respondents that the applicant's claim for disability pension had been rejected by the PCDA (P), Allahabad. The counsel stated that there is a catena of judgments which state that the PCDA (P) is not entitled to modify the disability granted by the Release/Invalidation Medical Board, especially since the case was never reviewed by the medical authority. The Counsel further added that since the medical documents and the personal documents of the applicant had been destroyed as per the Regulations of the Army, it is imperative that considering the fact that the applicant was invalided out on completion of 03 years, 06 months and 18 days, he be granted necessary relief as per the policy in vogue.

4. The counsel further added that keeping in view the various judicial pronouncements and liberal approach of the Govt to mitigate the hardship of the disabled soldiers, the MoD, vide letter dated 29.06.2017 (Annexure A-4), had directed that if an individual met certain conditions as observed by the Hon'ble Supreme Court in the case of *Dharamvir Singh v. Union of India and Others* (Civil Appeal No.4949/2013), the relief granted by the Court may be extended to

him after exhausting all legal remedies. It is further added that the Department of Expenditure and Ministry of Finance has given its concurrence for implementation of order in the said terms where all legal remedies have been exhausted and, therefore, he submitted that the applicant's case was squarely covered by these instructions.

5. The Counsel further relied upon the judgments of the Apex Court in the case of *Sukhvinder Singh v. Union of India and Others* (Civil Appeal No.5605/2010) (Annexure A-7), *Union of India and Others v. Sinchetty Satyanarayan* (Civil Appeal No.20868/2009) (Annexure A-8) and in *Union of India and Another v. Rajbir Singh* (Civil Appeal No.2904/2011) (Annexure A-10).

Arguments by the Counsel for the Respondents:

6. The Counsel for the respondents vehemently asserted that this OA is not maintainable on the ground of extraordinary delay and laches. The applicant here approached the Armed Forces Tribunal only in May 2018 almost 64 years after his retirement and merely serving a legal notice in 2016 cannot be a reason enough to explain extraordinary and inordinate delay of so many years in filing this application. The respondents also vehemently asserted that since the

documents had been destroyed as per the Regulations of the Army, 1987 and only the extract of the Long Roll was available, it does not indicate any details of the medical board except stating the cause of discharge, with that the applicant was medically boarded out and that the disability pension claim had also been rejected vide PCDA (P), Allahabad vide letter dated 05.03.1955.

7. Having heard the learned counsel for the parties, we find from the brief and plain reading of literature of disability, as filed by the applicant, indicates that he was suffering from "Hypermetropia and amblyopia and trachoma". The current literature available indicates that "Hypermetropia" is the condition of the eyes where the image of a nearby object is formed behind the retina and the light is focused behind the retina instead of focusing on the retina. "Hypermetropia" is mainly caused due to certain structural defects in the retina. As far as "amblyopia" is concerned, it is also known as "lazy eye" which is an eye condition that is not caused by any underlying disease. It usually impacts one eye only. However, there are some patients who have "amblyopia" in both eyes. Adults often experience reduced vision that is not always correctable with glasses or contact lenses. Typically, the

vision loss is due to how the brain treats input from the amblyopic eye or eyes. Instead of fully acknowledging the visual stimuli, the brain seemingly ignores the visuals. "Trachoma" is a bacterial infection that affects the eyes causing mild itching and irritation of eyes and eyelids, swollen eyelids and pus. As seen from the above, all the disabilities of the applicant related to the problem with his eye and a plain reading of available medical literature suggests that they are neither attributable to military service condition nor aggravated by any service condition.

8. Apart from the fact that the disability is neither attributable to military service nor aggravated by conditions of service, one of the moot questions that warrants consideration by us in this O.A is:

> Whether the claim made for grant of benefit after a period of 64 years of the retirement and occurrence of the cause of action needs to be entertained by this Tribunal and the extraordinary delay and laches on the part of the applicant requires condonation?

9. We are conscious of the fact that in many cases, delay has been condoned by this Tribunal and the benefits of disability pension and invaliding pension have been granted to litigants based on the law

laid down by the Hon'ble Supreme Court in various cases, particularly *Union of India v. Tarsem Singh* (2008) 8 SCC 648 by restricting the payment of arrears to three years prior to the filing of the application. However, in this case, we are required to consider the effect of delay with reference to the destruction of documents by the respondents and the handicap in evaluating the disability, its attributability and causal connection to the service rendered and the medical opinion in the matter. Even though a catena of judgments had been cited before us with regard to the issue in question, we find that a Coordinate Bench of this Tribunal considered somewhat similar situation in *Raghbir Singh v. Union of India and others* (O.A No. 1964 of 2020 decided on 26.08.2021) and dismissed the application on account of delay.

10. In *Raghbir Singh* (supra), claiming to have sustained disability on account of "Liyodrama Leprosy", because of which the applicant was invalidated out of service on 30.03.1964, claim for disability pension was made in the year 2020, after the applicant received certain medical documents through an RTI application submitted in the year 2019. In the said case, identical issues with

regard to delay was considered and after hearing the parties at length on the issue, the Coordinate Bench observed in the following manner:

> *5. It is an undisputed fact that there is an inordinate delay of more than 57 years in approaching this Tribunal. It is also a fact that respondents have destroyed the medical documents and other relevant documents after 25 years of applicant's discharge in accordance with rules on the subject. That apart, no meaningful medical document or opinion of the Medical Board, have been produced by the applicant, to substantiate his claim. From the documents submitted by applicant in the OA it is not even possible to come to any firm conclusion as to what was the disease from which he was suffering, at the time of his discharge. Additionally in the absence of medical board proceedings we don't know the reasons as to why the medical board decided to declare the disease if any as NANA. Therefore, we are not in a position to verify the factual details as to what was the exact nature of disability suffered by applicant, what was the disability percentage and what were the reasons for the medical board to declare the disability as NANA. During hearing, the learned counsel for the applicant stated that even if the records have been weeded out, the claim of Disability pension cannot be rejected. He also pointed out that the opinion of the Medical Board is not required for adjudication of the present case in view of the fact that the discharge book issued by the concerned authority establishes the fact that the applicant had been invalided out on medical grounds. We do not find any force in that contention. Disability pension is not meant for every disability which a soldier has: it is meant for only that disability which is attributable to or aggravated by military service. The opinion of medical board in deciding attributability/ aggravation to military service is the single most important factor in deciding eligibility to Disability*

pension. Hence in the absence of medical board, no decision on disability pension can be taken in vacuum.

6. In this regard, it would be appropriate if we 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 Long Rolls are not primary evidence and don't 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.*

7. Viewed thus, the contentions raised by learned counsel for the applicant for grant of disability pension, in our opinion, is misconceived for the reason that the statutory provision contained in Para 173 of the Pension Regulations for the Army is mandatory and cannot be overlooked while deciding the controversy. It was incumbent upon the applicant to produce the Medical Board's opinion to indicate that the disability was attributable to military service. It has been rightly submitted by learned counsel for the respondents that the discharge book mentions only the reason for discharge. It is not a substantive evidence to establish the cause of disability and the related factor of attributability to military service. Therefore, the judgments relied upon by the learned counsel for the applicant, have no relevance, so far as this case is concerned.

*8. As regards delay, in **C. Jacob Vs. Director of Geology and Mining' and another** reported in (2008) 10 SCC 115, the Hon'ble Supreme Court held that "a dead or stale claim is not permitted to be revived. The person who sleeps over his right is not entitled for any indulgence". Further, the Hon'ble High Court of Judicature at Allahabad vide their order dated 04.08.2004 in the case of **Inderpal Singh Vs. UoI and Others [Civil Misc. Writ Petition No. 8524 of 2000]**, had dismissed the petition holding that the petitioner himself was not interested in pursuing the matter and kept silent for 11 years. Consequently, the appeal filed by the petitioner was wholly belated and the delay could not be condoned merely because the petitioner woke up after 11 years.*

*9. Additionally, the law on the importance of the opinion of a Medical Board has been well settled by the Hon'ble Supreme Court. While pronouncing judgment in the case of **Union of India & Another Vs. Ex Rfn Ravinder Kumar [Civil Appeal No. 1837/2009]**, the Hon'ble Apex Court vide its order dated 23.05.2012 had stated that opinion of Medical Board should not be over-ruled by the courts unless there is a very strong medical evidence to do so. Relevant part of the above judgment reads as under :*

> *"Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should notgrant such pension brushing aside the opinion of Medical Authorities, record the specific finding to the effect that the disability was neither attributable to nor aggravated by military service, the court should not ignore a finding for the reason that Medical Board is specialized authority composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability due to military service and the conditions of service resulting in disablement of the individual."*

10. Thus once a disability pension has been denied, it means that the disease was considered as NANA by the medical board at the time of discharge. Therefore after a huge delay of 57 years when the medical board has already been destroyed, it is not possible for the bench to overturn the opinion of medical board without understanding the reasons as to why the medical board had declared the disease as NANA. Thus it is not possible for the bench to apply its mind in vacuum. In this context, it will be relevant to refer to the recent 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 this 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-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 where for 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."

11. Although the applicant has filed an application for condonation of delay, but he has failed to show any sufficient cause for the huge delay of about57 years and in the absence of any sufficient cause, the same cannot be allowed. Even the Hon'ble Supreme Court has laid down guiding principles for courts to consider while examining cases for condonation of delay by stating the "adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate." and "If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly." Also, "The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed to totally unfettered free play." Thus, the petition deserves to be dismissed on this count alone.

12. In view of the aforesaid facts and circumstances and also the guidelines laid down by the Hon'ble Supreme Court and the High Court, 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 no decision can be taken in vacuum on attributability or aggravation of the disability without perusing the reasons based on which the original Medical Board had decided to consider the disability as 'Neither attributable to nor aggravated by military service' (NANA). That apart, it is evident that no sufficient explanation for condonation of inordinate delay has been adduced and hence, condonation of delay, 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.*

We find from the aforesaid decision that disability pension cannot be granted for every disability that a person in uniform sustains. The disability has to be shown to be attributable to or aggravated by military service and the opinion of Medical Board in deciding attributability/ aggravation to military service is the single most important factor in deciding eligibility to disability pension.

12. The Coordinate Bench of this Tribunal has also referred to the decision in *Shri Deo Prakash* (supra) in the matter of destruction of record and after referring to the provisions of Para 173 of the Pension Regulations for the Army, the decision in *C. Jacob* (supra) has been referred to, wherein it has been clearly held by the Hon'ble Supreme Court that a dead or stale claim is not permitted to be reviewed. A person who sleeps over his right is not entitled for any indulgence,

particularly when the records, which are relevant and which are very much important for deciding the *lis,* had been destroyed on account of delay and laches on the part of the claimant.

13. That apart, the importance of the opinion of the Medical Board as laid down by the Hon'ble Supreme Court in the case of *Ex Rfn Ravinder Kumar* (supra) and various other decisions also emphasized that the opinion of the Medical Board has to be given primary consideration in deciding disability. The medical opinion is of paramount importance in the matter of deciding the case of disability.

13. In the case on hand, we find that the medical records of the applicant had been destroyed and there is nothing before us to show as to what are the medical opinions, based on which attributability or aggravation of the disease can be analysed, inquired into and a decision taken. On the contrary, the medical literature filed by the applicant himself indicates that he was suffering from "Hypermetropia, Amblyopia (RE) and Trachioma" and in Para 7, the details of the ailments had been discussed by us and if the medical literature suggests that the ailment is not attributable to nor

aggravated by military service, even on merits, no benefit can be extended to the applicant.

14. Prima facie, with regard to the merit of the matter, the opinion that can be formed based on the material available are that the disease was not attributable to or aggravated by military service and the action of the applicant in sleeping over the matter has further created a situation where this Tribunal is handicapped in causing a proper inquiry in the absence of medical records being destroyed. This being the factual position, in law, this is a case where the legal right to receive the benefit of disability pension based on the Rules and Regulations and the principles of law is not available in favour of the applicant. Until and unless a legal right is established to claim the benefit, a statutory Tribunal cannot grant any benefit and if in the backdrop of these judgments where condonation of delay has been granted and benefit restricted to three years prior to filing of the application have been granted or analysed, it would be seen that in all such cases, when the benefit had been granted in spite of delay, two things were established viz. (i) a legal right to claim the benefit based on the material available, particularly the medical records and other

service records were established; and (ii) the legal right was a continuous right cause for which accrue on every occasion when mandatory benefit, accruing out of the legal right was denied and it was on account of this continuous right being available that the delay was condoned and restricted the payment of arrears to three years based on the law laid down in *Tarsem Singh* (supra) benefit was granted. However, the present case is a totally different one.

15. The delay on the part of the applicant is not only explained in the sense that the applicant kept quiet right from the period of his retirement in the year 1954 up to 2016 sent a legal notice in the year 2016 and then invoking the jurisdiction of this Tribunal, nothing is explained as to why the applicant kept quiet from 1957 up to 2016. That apart, the applicant, in his application for condonation of delay, has only relied upon the judgments which are based on a legal right established and a continuous cause of action accruing on account of this legal right being denied every month when the payment becomes due. In the present case, even the legal right to receive the benefit is not established and in the absence of medical records, inasmuch as attributability of the disease to military service is not established and

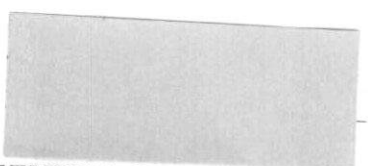
even the literature produced indicates the claim of the applicant with regard to attributability and aggravation. That being so, when the right of the applicant to receive the benefit of disability and disability pension itself is doubtful and under dispute, how can a continuous wrong be held to have occasioned to claim the relief. This itself is sufficient enough to hold that the law laid down by the Hon'ble Supreme Court in *Tarsem Singh* (supra) will not apply as the applicant has miserably failed to prove that a right available to him based on the Rules and Regulations has been denied which gives right to breach and occurrence of continuous wrong every month when the pension is denied to him. That being so, we are of the considered view that in the facts and circumstances of the case and as detailed herein above and keeping in view the principles carved out by this Tribunal in the case of *Raghbir Singh* (supra), being conscious of the fact that in many cases benefits have been granted to certain employees after condoning the delay, but the case of the applicant and other cases, where the medical reports essential for deciding the disputes are not available, this Tribunal cannot grant any benefit to the applicant and

as the principle applied by the Coordinate Bench in the case of *Raghbir Singh* (supra) squarely applies in the case of the applicant.

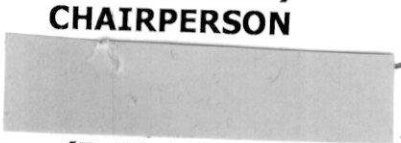
16. Resultantly, the O.A is dismissed both on the ground of delay as well as on merits.

Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this the 6th day of January 2023.



(RAJENDRA MENON)
CHAIRPERSON



(P. M. HARIZ)
MEMBER (A)

Alex/Neha