

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

J.

OA 600/2019 WITH MA 1171/2019

Ex Sigmn Anant Bir Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. S M Dalal, Advocate

For Respondents : Mr. K K Tyagi, Advocate

CORAM :

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

ORDER
26.09.2023

Vide our orders of even date, we have dismissed the OA. Faced with the situation, learned counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[RAJENDRA MENON]
CHAIRPERSON

[P.M. HARIZ]
MEMBER (A)

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

O.A. No. 600 of 2019
with
M.A. No. 1171 of 2019

In the matter of :

Ex Sigmn Anant Bir Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri S.M. Dalal, Advocate

For Respondents : Shri K.K. Tyagi, Advocate

CORAM:

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

ORDER

M.A. No. 1171 of 2019 :

Vide this application, the applicant seeks condonation of 13690 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned. MA stands disposed of.

O.A. No. 600 of 2019 :

The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant, who is aggrieved by the denial of the disability pension by the respondents, seeking disability pension along with rounding-off benefit to 50% along with arrears and interest.

2. Briefly, the facts of the case are that the applicant was enrolled in the Indian Army on 27.10.1977 and was invalided out from service on 09.04.1981 being in low medical category 'EEE' after rendering 03 years and 164 days of service. The Invaliding Medical Board (IMB) held on 21.01.1981 assessed the disability of the applicant i.e. BILATERAL FLAT FEET' @ 6-10% for two years while the same was opined by the IMB as 'neither attributable to nor aggravated by the military service'. Based on the same, the applicant was not granted disability pension.

3. The initial claim of the applicant for grant of disability pension was rejected by the PCDA (P) vide letter dated 31.08.1982. The applicant filed an RTI application to get the copy of the IMB proceedings which was provided by the

Record Office vide letter dated 24.05.2018 and then the applicant preferred his first appeal dated 15.05.2018, which was rejected by the Signal Records vide letter dated 31.07.2018. Hence, this OA.

4. Learned counsel for the applicant pleaded that at the time of joining, the applicant was found mentally and physically fit for joining the Indian Army and there is no note made stating that he was suffering from any disease at that time. Learned counsel submitted that even during recruit training, the applicant was declared fit in all respect. It is submitted that the applicant was posted to a field area in June, 1979 and the applicant started having pain in both of his feet and he was given medicines for the same, however, the condition of the applicant worsened and he was admitted to 158 Base Hospital.

5. Learned counsel added that in the IMB proceedings where he was found suffering from 'Bilateral Flat Feet', in the summary and opinion of the Graded Specialist in Surgery stated that the onset of the disease was insidious (proceeding in a gradual, subtle way but very harmful effects) and started some time in December, 1979 and that

the IMB erroneously stated that the disability existed before enrolment. Learned counsel further submitted that the flat foot is a deformity which can be made out from naked eyes and no specialist or special equipment is required to diagnose the same and this goes to prove that the disability has been caused due to military service. He contended that the IMB committed grave error in assessing the disability as neither attributable to nor aggravated by military service.

6. *Per contra*, learned counsel for the respondents controverted the arguments put forth on behalf of the applicant and contended that the applicant is not entitled to the relief claimed since the IMB, being an expert body, found the disability of the applicant as 'neither attributable to nor aggravated by Military Service' and the same was assessed at less than 20% (6-10%) for two years. Learned counsel further submitted that as the applicant's disability does not fulfil the twin conditions to be eligible to get disability pension of it being assessed at 20% or more and conceded as 'attributable to/aggravated by military service', as per Para 173 of the Pension Regulations for the Army, 1961 (Part-I),

he is not entitled to disability pension. Therefore, learned counsel prayed that the OA be dismissed.

7. We have heard respective submissions of the learned counsel for the parties and have carefully perused the records.

8. It is undisputed that the disability of the applicant was held 'neither attributable to nor aggravated by military service' and that when the applicant suffered with the disability, he was treated conservatively and appropriately. With the disability of the applicant of 'Bilateral Flat Feet', the applicant cannot be retained in the service. Even if the applicant was enrolled in the Army, he suffered with the disability within two year of service. The army has a rigorous physical routine involving much running, climbing, jumping, walking on uneven surfaces in difficult terrain. A candidate's physical structure has to be amenable to take this strain without suffering injury. Medical research has shown that flat feet may be genetic and predispose an individual to perform below par in such physical activity. Initially, there is pain in the foot, ankle and knee, coupled with cramps in the calf muscle. Later, there may be injuries

to the knee, hip and spine. All of this is due to the unnatural posture caused by the collapsed arches. The summary of the case attached to the IMB proceedings also states that the applicant had pain in both feet while walking and running and after examining, the Graded Specialist (Surgery) stated that the X-ray of both feet showed flattening of arches of feet and, therefore, the applicant is unlikely to be a fit soldier. However, the disability of the applicant was assessed by the IMB at less than 20% (6-10%) for two years.

9. The Hon'ble Supreme Court in its judgement in **Union of India & Ors. Vs. Wing Commander S.P. Rathore [Civil Appeal No. 10870/2018]** decided on 11.12.2019, has held that disability element is not admissible if the disability is less than 20%, and that the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off. Relevant paras of the said judgment read as under :

"1. The short question involved in this appeal filed by the Union of India is whether disability pension is at all payable in case of an Air Force Officer who superannuated from service in the natural course and whose disability is less than 20%.

xxx

xxx

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8. This Court in *Ram Avtar (supra)*, while approving the judgment of the Armed Forces Tribunal only held that the principle of rounding off as envisaged in Para 7.2 referred to herein above would be applicable even to those who superannuated under Para 8.2. The Court did not deal with the issue of entitlement to disability pension under the Regulations of Para 8.2.

9. As pointed out above, both Regulation 37(a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off.

10. The Armed Forces Tribunal ('AFT'), in our opinion, put the cart before the horse. It applied the principles of rounding off without determining whether the petitioner/ applicant before it would be entitled to disability pension at all.

11. In view of the provisions referred to above, we are clearly of the view that the original petitioner/applicant before the AFT is not entitled to disability pension. Therefore, the question of applying the provisions of Para 7.2 would not arise in his case. In this view of the matter, we set aside the order of the AFT and consequently, the original application filed by the Respondent before the AFT shall stand dismissed.

The appeal is allowed accordingly."

10. Hon'ble Supreme Court in its judgement in **Bachchan Prasad Vs. Union of India & Ors. [Civil Appeal No. 2259 of 2012]** dated 04.09.2019 also held that an individual is not entitled to disability element if the disability is less than 20% as under :

"After examining the material on record and appreciating the submissions made on behalf of the parties, we are unable to agree with the submissions made by the learned Additional Solicitor General that the disability of the appellant is not attributable to Air

Force Service. The appellant worked in the Air Force for a period of 30 years. He was working as a flight Engineer and was travelling on non pressurized aircrafts. Therefore, it cannot be said that his health problem is not attributable to Air Force service. However, we cannot find fault with the opinion of the Medical Board that the disability is less than 20%. The appellant is not entitled for disability element, as his disability is less than 20%."

11. The Hon'ble Supreme Court in its judgement in the case of Secretary, Ministry of Defence & Others Vs. Damodaran A.V. (dead) through LRs. & Others [(2009) 9 SCC 140], clearly laid down the following principles with regard to primacy of medical opinion:-

"8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/invalidating medical board. The said release/invalidating medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/recommended in view of the disease being capable of being improved. All the aforesaid aspects are recorded and recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/recommendation on the basis of the medical report,

injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and of course, the physical examination of the individual.

9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."

12. In the light of the above considerations, we conclude that since the disability of the applicant does not meet the eligibility criteria for being granted the disability pension as the IMB assessed the disability at less than 20% (6-10%) for two years. Thus, the applicant is not entitled to the disability element and consequently not entitled to disability element of pension. Accordingly, the OA stands dismissed.

13. There is no order as to costs.

Pronounced in open Court on this 26 day of September, 2023.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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