

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

C.

OA 1185/2017 WITH MA 876/2017

Ex CFN Dharamvir Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. VS Kadian, Advocate
For Respondents : Mr. YP Singh, 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 allowed the OA. Faced with the situation, learned counsel for the respondents 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)

Neha

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In the matter of :

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For Applicant : Shri V.S. Kadian, Advocate

For Respondents : Shri Y.P. Singh, Advocate

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HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

The present Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has sought the following reliefs :

- (a) Direct respondents to consider the disability of the applicant as attributable to or aggravated by military service and grant disability element of pension with the benefit of broad banding, And/or
- (b) Director respondents to pay the due arrears of disability element with the interest @ 12% per annum till payment. And/or

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost against the respondents.

2. The facts in brief are that the applicant, having been found medically and physically fit, was enrolled in the Indian Army on 04.08.1971 and he was invalided out from service with effect from 22.11.1981 being diagnosed with 'Low Backache' in low medical category 'CEE (Permanent). The Invaliding Medical Board (IMB) held in October, 1981 assessed the applicant's disability 'LOW BACKACHE' @ 20% for two years and the disability was held as 'aggravated by military service due to stress and strain of service conditions', for which the applicant was granted disability element of pension from 22.11.1981 to 23.10.1983 vide PPO dated 10.05.1982. Thereafter, the RSMB was conducted and the disability of the applicant was again assessed @ 20% from 24.10.1983 to 12.01.1984 and the applicant was again granted disability element of pension for the said period also.

3. The applicant was required to be subjected to another RSMB for reassessment of the disability beyond 13.01.1984

and all the medical documents were forwarded to the BASE Hospital, Delhi Cantt vide EME letter dated 05.09.1985. A notice was issued for appearance of the applicant before the RSMB vide letter dated 12.12.1985. However, no response was received from the applicant in this regard and all the documents received from the BH, Delhi Cantt were processed to PCDA (P), Allahabad vide letter dated 15.03.1986 and the PCDA (P), Allahabad, after due examination of the records in consultation with the competent medical authority, rejected the claim as the disability was re-assessed permanently at less than pensionable degree. The decision was communicated to the applicant vide EME Records letter dated 12.07.1986.

3. The applicant filed a petition dated 25.02.1988 which was replied to by the EME Records vide letter dated 30.05.1988. The applicant served legal notices dated 23.10.2015 and 31.10.2015 which were replied to by the respondents vide letter dated 11.12.2015 intimating about the revision of the service element of the disability pension granted from time to time and that the applicant was entitled to the benefit of rounding off of the disability pension.

Thereafter, the applicant sent another legal notice cum representation dated 31.08.2016. As no reply was forthcoming by the respondents, the applicant has filed the present OA for grant of disability pension.

4. Learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note was made in his medical record that the applicant was suffering from any disease at that time and any medical disability contracted by him during the course of his service should be treated as attributable/aggravated by the stresses and strains of his service. Learned counsel explained about the strenuous and stressful schedule of duties being in the trade of Vehicle Mechanics Class-II, which was full of strenuous work with continuously lifting and twisting and bending of the back with postural stress, which took a toll on his physical and mental health and resultantly, in October, 1979, the applicant was diagnosed with Low Backache and when he was posted at Jammu and, therefore, on 21.11.1981, the applicant was invalided out from service in permanent low medical category after completion of 10 years 03 months and

18 days of service. Learned counsel referred to various rules and regulations of the Medical Services Armed Forces and Regulations for the Army 1987 (Rev.) to submit that all recruits before enrolment or engagement into service, are subjected to a medical examination in the prescribed manner.

5. Learned counsel for the applicant placed reliance on the catena of judgments of the Hon'ble Supreme Court including **Dharamvir Singh Vs. Union of India and Ors.** (2013) 7 SCC 316, **Union of India and Ors. Vs. Rajbir Singh** (2015) 12 SCC 264, **Sukhvinder Singh Vs. Union of India & Ors.** [2014 (14) SCC 364], **Union of India and others Vs. Manjit Singh** [2015 (6) SCALE 2015], and **Union of India & Ors. Vs. Angad Singh Titaria** [2015 (2) SCALE 640] and submitted that the respondents' action in denying the disability pension to the applicant is unjustified and unsustainable in law and that the applicant is entitled to grant of disability pension for life with the benefit of rounding off of the same.

6. *Per contra*, the learned counsel for the respondents contended that the applicant is not entitled to the relief

claimed since the disability of the applicant was re-assessed at less than pensionable degree. Learned counsel submitted that the applicant was in receipt of the disability pension till 12.01.1984 and the same was rightly stopped due to assessment of the disability at less than 20%. He further submitted that although the applicant's disability has been conceded as 'aggravated to military service', however, as the same has been assessed at less than 20%, it does not fulfil one of the twin conditions in terms of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I) of being assessed @ 20% or more and, therefore, the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

6. We have heard learned counsel for the parties and have perused the records.

7. It is not in dispute that in the instant case, the applicant was in receipt of disability element of pension till 12.01.1984. It is also not in dispute that the RSMB assessed the disability of the applicant as 20% w.e.f. 24.10.1983 to 12.01.1984 and aggravated by military service. Thereafter, in the next RSMB, when the applicant fails to respond, the

PCDA (P) Allahabad, assessed the disability again at less than 20% permanently and thus the disability pension was not held admissible.

8. The Court takes note of the fact that the applicant was discharged on the recommendations of RMB on the medical grounds being in low medical category on 21.11.1981 after rendering 10 years, 03 months and 18 days of service i.e. before completion of tenure of engagement. The applicant, therefore, is deemed to be invalided out of service on medical grounds.

9. With regard to the disability of the applicant assessed @ 20% for two years and held as 'aggravated by military service' by the RMB, the applicant was granted disability element of pension from 22.11.1981 to 23.10.1983 vide PPO No. D/1704/82 dated 10.05.1982. After expiry of two years, an RSMB was conducted which re-assessed the disability of the applicant @ 20% w.e.f. 24.10.1983 to 12.01.1984. Thereafter, to re-assess the disability beyond 13.01.1984, another RSMB was to be conducted, however, due to non-response of the applicant towards this RSMB, all the documents were sent to the PCDA (P), Allahabad, and the

disability was assessed at less than pensionable degree permanently by the PCDA (P) Allahabad.

10. With regard to the above, it would be appropriate to refer to the policy letter dated 07.02.2001, which provides that with regard to re-assessment of a disability, in case of disability being of permanent in nature, the decision once arrived at will be final and for life and no periodical review would be needed, unless the individual requests for the same.

11. The perusal of the case-sheet attached with AFMSF-16 (RMB) forwarded by the respondents at Annexure R-1, it is seen that the applicant was a permanent low medical category CEE (P) with effect from 30.12.1980 and that the applicant is to be relived in medical category CEE (P). Also that the disability was of a permanent nature is qualified by the fact that the IMB assessed the disability as 20% and the RSMB re-assessed once again at 20% for two years. We, therefore, we have no hesitation in holding this as being valid for life.

12. Furthermore, with regard to the disability of the applicant assessed for a particular period, it can be made out

from the judgment of Hon'ble Supreme Court in the case of **Commander Rakesh Pande Vs. Union of India & Ors.** [Civil Appeal No. 5970 of 2019] decided on 28.11.2019, wherein the Hon'ble Apex Court while upholding the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, granted the disability for life and observed as under :

"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.

[Emphasis supplied]

13. The Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Rajbir Singh** [Civil Appeal Nos. 2904 of 2011] decided on 13.02.2015, after considering the case in *Dharamvir Singh (supra)* upholding the decision of the Tribunal granting disability pension observed as under :

"15. Last but not the least is the fact that the provision for payment of disability pension is a

beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent home with a disability at times even before they completed their tenure in the armed forces.....There may indeed be cases, where the disease was wholly unrelated to military service, but, in order that denial of disability pension can be justified on that ground, it must be affirmatively proved that the disease had nothing to do with such service..... ”

14. In the light of the preceding paragraphs and essential parameters given aforesaid, we hereby set aside the impugned order rejecting the claim of the applicant for disability pension and hold that he is entitled to disability element of pension @ 20% for life with effect from 13.01.1984, which is to be broad-banded to 50% w.e.f. 01.01.1996 in the light of the judgment of the Hon'ble Supreme Court in **Union of India and Ors. Vs. Ram Avtar** [Civil Appeal 418 of 2012] decided on 10th December, 2014. However, the arrears of disability pension are restricted to three years prior to the date of filing of the application i.e. 12.07.2017.

15. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, *failing which*, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

16. In view of the above, pending MAs, if any, shall stand closed. 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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