

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA 1831/2020

Ex POA (AH) Sandeep Kumar Sheoran ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Ved Prakash, Advocate  
For Respondents : Mr. Shyam Narayan, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

- "(a) Quash Impugned Order No. PEN/600/D/LRDOI:01/2020/212185R dated 29.01.2020.*  
*(b) Direct the respondents to grant the Disability Element Pension to the applicant duly rounded off to 50% with w.e.f. his date of discharge.*  
*(c) To direct the respondents to pay the due arrears of disability element pension with interest @12% p.a. from the date of retirement with all the consequential benefits.*  
*(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."*

**BRIEF FACTS.**

2. The applicant Ex POA (AH) Sandeep Kumar Sheoran joined the Indian Navy on 25.01.2005 and was discharged from the Naval service on 31.01.2020, on expiry of his engagement with 15 years

and 07 days of qualifying service. The applicant while in active service sustained an injury namely **“Mehcanical Low Backache”** on 21.05.2018. The Re-Categorization Medical Board proceedings dated 27.08.2019, changed the disability of the applicant from **“Mehcanical Low Backache”** to **“Axial Spondyloarthritis”** and assessed the disability of the applicant @20% and held the disability of the applicant as ‘not attributable to but aggravated by’ Naval service. The Release Medical Board dated 21.12.2019 held that the applicant was fit to be discharged from service in low medical category S3A2 (P) PMT for the disability of **“Axial Spondyloarthritis”** for life assessed @ 10% for life while the net qualifying element for disability was recorded as NIL for life. The Release Medical Board had assessed the disability of the applicant as ‘Not Attributable to; but Aggravated by’ military service.

3. The applicant’s claim for the grant of disability pension was rejected by the Competent Authority and the same was intimated vide letter no. PEN/600/D/LRDO 1:01/2020/212185R dated 29.01.2020 and he was advised to prefer an appeal against the rejection within six months from the date of receipt of the rejection letter. As per the OA the applicant had preferred the First Appeal vide letter dated 05.02.2020 against rejection of his claim for the grant of the disability element of pension however, the respondents

denied receipt of any such appeal in the counter affidavit, aggrieved of this, the applicant has filed the present OA. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(1) of the AFT, Act 2007.

### ***CONTENTIONS OF THE PARTIES***

4. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, the learned counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Indian Navy at various places in different environmental and service conditions in his prolonged service and thus thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

5. The applicant also placed reliance on the verdicts of the Hon'ble Supreme Court in the case of ***Union of India Vs. Mahavir Singh Narwal*** SLP 24171/2004, and also on the orders of the AFT, Principal Bench, New Delhi in OA No. 238/2014 titled ***Sukhbir Singh Vs. UOI & Ors.*** dated 08.09.2015 and in OA 311/2016 titled ***Hav Kuldip Singh (Retd.) Vs. UoI & Ors.*** wherein similarly situated personnel were given relief.

6. Per contra, the learned counsel for the respondents submitted that the sanction of disability pension in case of a disability at the time of discharge from service is based on fulfillment of essential conditions as laid down under Regulations 101 & 105-B of the Navy (Pension) Regulations, 1964 wherein the disability should be either attributable to or aggravated by the Naval service and the minimum assessment for the disability mandatorily is required to be 20% or more. The learned counsel for the respondents further submits that although the applicant's disability was aggravated by the military service but was not attributable to and was also less than 20% as declared by the RMB, hence his claim for the grant of the disability was rejected by the competent authority and thus the applicant is not entitled to the grant of the disability pension.

### *ANALYSIS*

7. We have heard the learned counsel for the parties and have gone through the records produced before us. We find that, as the disability suffered by the applicant has been accepted as 'aggravated by Naval service' but assessed @ less than 20%, now the issue which needs to be considered is as to whether the applicant is entitled to disability element of pension or not?

8. It is undisputed fact that applicant at the time of joining the Indian Navy on 25.01.2005, was found medically and physically fit. It is also not in dispute that the disability with which the

applicant is suffering from is held as aggravated by the naval service by the RMB. However, with regard to the assessment of the disability i.e. less than @20%, there is scheme for assessment of the spinal deformity given in Para 32 Chapter VII of the Guide to Medical Officers (Military Pensions), 2002, amendment 2008, which has been relied upon by the learned counsel for the applicant to contend to the effect that the disability of the applicant cannot be assessed less than 20% and which read as under:-

*“Assessment of Spinal Deformity.*

*32. It is a common sequelae to fracture vertebrae, caries spine and ankylosing spondylitis.*

- |  |               |
|--|---------------|
| <i>(a) Flexion, extension, lateral flexion Deformity.</i>                                | <i>20-40%</i> |
| <i>(b) Stiff spine</i>   | <i>50%</i>    |
| <i>(c) Stiff spine with restriction of chest Expansion (e.g. ankylosing spondylitis)</i> | <i>60-80%</i> |

”

9. From the above, it is clear that vide Para 32 Chapter VII of the GMO (MP), 2008, the assessment scheme has been laid down in respect of the spinal deformity. In the present case, although the disability of the applicant has been conceded as aggravated by the Naval service, but the Release Medical Board dated 02.12.2019 qua the applicant held that the composite assessment for the disability of the applicant is @10%. However, on going through the Diagnosis and Impression of summary and opinion of Col Gautam Mullick, Sr. ADV. (Med) and Rheumatologist

dated 11.11.2019, we find that the condition of the applicant was recorded as improved with NSAID and DMARD therapy and has no restriction of spinal movements or extra-axial involvement. The same reproduced herein under:-

***“DIAGNOSIS & IMPRESSION: This patient is a case of Axial Spondyloarthritis (HLA B27 POSITIVE) who has improved with NSAID and DMARD therapy. He also had mechanical polythralgia due to co-existent joint hypermobility. Has no restriction of spinal movements or extra-axial movement.”***

From perusal of the above summary and opinion, it is clear that there is no spinal deformity and there was no evidence of stiff spine with restriction or any condition as mentioned in the Para 32 Chapter VII, GMO (MP) 2008, in the case of the applicant. Therefore, the above guidelines for assessment of the minimum percentage of disability relied upon by the applicant are not applicable to the present case.

10. As per the Regulations 101 and 105-B of the Navy (Pension) Regulations, 1964, for grant of disability pension, the disability should be either attributable to or aggravated by the Naval service and the minimum assessment of the disability must be required to be 20% or more. In the instant case, although the disability of the applicant was assessed by the RMB as ‘aggravated by military service’, but the same has been assessed @ 10% (less than 20%).



With regard to the issue relating to entitlement of disability pension when the assessment of a disability by the RMB is less than 20% (10%), it is essential to advert to the judgment dated 11.12.2019 of the Hon'ble Supreme Court in *Union of India & Ors. Vs. Wing Commander S.P. Rathore [Civil Appeal No. 10870/2018]*, wherein it was held that the 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. The 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

*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."*

11. The Hon'ble Supreme Court in its judgment dated 04.09.2019 rendered in the case of *Bachchan Prasad Vs. Union of India & Ors. [Civil Appeal No. 2259 of 2012]* also held that an individual is not entitled to the disability element of pension if the disability is less than 20%. Relevant portions of the said judgment read 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%."*

12. In light of the above considerations, we conclude that since the disability of the applicant does not meet one of the twin criteria



as per Regulation 101 and 105-B of the Navy Pension Regulation, 1964, for being eligible for the grant of the disability element of pension as the RMB assessed the disability of the applicant at less than 20% (10%), the applicant is not entitled to the disability element of pension.

### CONCLUSION

13. In view of the foregoing, OA 1831/2020 stands dismissed being devoid of merit.

14. There is no order as to costs.

Pronounced in open Court on 26 day of December, 2023.

[REAR ADMIRAL ~~DHIREN VIG~~  
MEMBER (A)]

[JUSTICE ANU MALHOTRA]  
MEMBER (J)]

/nmk/