

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

106.

OA 653/2022 WITH MA 840/2022

Sep Raju Singh (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Shri M.K. Gupta, Advocate

For Respondents

: Shri D.K. Sabat, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN C P MOHANTY, MEMBER (A)

ORDER

11.09.2023

MA 840/2022

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh (2009(1) AISLJ 371), the delay in filing the OA is condoned. MA stands disposed of.

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2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying for following relief:-

- a) *To direct the respondents to re-calculate the composite assessment of percentage of disabilities as per applicable Rules/provisions, considering his percentage of Disability which has already been*

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assessed @30, 30 and 20% respectively for Onset No. 1,2 and 3; and/or

(b) An appropriate Order/directions to the Respondents to re-calculate the composite assessment which has already been assessed @40% composite by RMB, seems to be erroneous and it should have been more than @50% further broad- banded to @75% instead of present 50%; and/or

(c) The Hon'ble Tribunal may please to direct the respondents to grant disability element @75% wef date of discharge along with its arrears and interest thereon @10% per annum and the disabilities are already declared attributable and aggravated by the Military service; and/or

3. The applicant was enrolled in the Indian Army on 15.08.1996 and discharged from service on 31.08.2005 on medical grounds after serving for 09 years. The Release Medical Board dated 20.05.2005 held that the applicant was to be discharged from service in low medical category for the disabilities - (i) PRIMARY HYPERTENSION @30% for life, (ii) TEAR LATERAL MENISCUS (RT) KNEE (OPTD) @ 30% for life and (iii) LOW BACKACHE WITH PIVID L4-5 @20% for life, with composite disability @ 40% for life; while the qualifying element for disability pension was recorded as disability (i) being aggravated by service and disabilities (ii) and (iii) being attributable to service. The applicant is receiving disability pension @ 40% broad banded to 50%.

It is the case of the applicant that the RMB has committed an error in calculation of composite disability which is more than 60% broad banded to 75%. The applicant preferred an appeal through his Ld counsel on 06 Jan 2022 which has not even been acknowledged for reason of being beyond 5 years old.

4. Placing reliance on the judgement of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*, Learned Counsel for applicant argues 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 Army at various places in different environmental and service conditions in his prolonged service, thereby, disabilities at the time of his service has already been accepted as attributable to or aggravated by military service.

5. Per Contra, Learned Counsel for the Respondents submits that though, the applicant preferred a petition dated 7th July, 2014 for revision of service element of disability pension which was replied vide Records, The JAT Regiment letter No 3189535/Pen/Rev/RTI dated 24th July, 2014, the respondents intimated the applicant that corrigendum PPO No D/Corr/5042/2014 dated 27th March, 2014 duly revised Service Element has already forwarded to Punjab National

Bank, Hazrat Ganj, Lucknow (Uttar Pradesh). After a considerable gap of nearly 8 years the applicant approached through his counsel pleadings for re-calculation of composite assessment of percentage of disability and grant disability element @ 75%.

6. Relying upon the judgment of Hon'ble Supreme Court in SLP (V) NO 23727/2008 in case of Ministry of Defence and Others Vs. Damodaran A.V.(D) through LRs and Ors. on 20.08.2009. Id. counsel for the respondents submits that the medical board is an expert body and its opinion is entitled to be given due weight, value and credence. Since the competent medical authority in the instant case have granted the disability element @ 40% broadbanded to 50%, the applicant is not entitled to his prayer for disability element @ 75% for life.

7. On careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of first disability was assessed to be 30% for life and aggravated by military service while second and third disability recorded to be 30 % and 20 % respectively and both attributable to service; each of the disability to be above 20 % which is bare minimum for grant of disability pension in terms of Regulation 53 of the Pension Regulations for the Indian Army, (Part-I) 2008.

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8. The issue of attributability of disease is not in dispute in this case, in view of the verdict of the Hon'ble Apex Court in *Dharamvir Singh v. Union of India (supra)*, wherein it is spelt out that any disease contracted during service is presumed to be attributable to military service, if there is no record of any ailment at the time of commission into the military Service.

9. It is pertinent take note of the method of calculation of composite disabilities which have been stated at Para 17 A of the GMO 2002 chapter 7 reproduced as below.

"17 A. Composite Assessment.

(1) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessments. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping.

There Is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct. "

10. The calculation have been demonstrated with examples in DGAFMS (MoD) letter No. 16036/RMB/IMB/DGAFMS/MA (Pen) dated 14 Dec 2009 which is extracted below:

2. *" As per the present laid down policy whenever there are two or more disabilities due to service, the compensation will be*

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based on the composite assessments of the degree of disablement. When separate disabilities have entirely different functional effects, the composite assessment is taken as the arithmetical sum of their separate assessments. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping.

4. Examples are given as under:

(a) Member 'A' has four disabilities – Fracture Femur- 20 %, (ii) Primary Hypertension- 30 % (iii) PIVD- 20 % and (iv) SNHL- 30 %. As per the laid down policy as mentioned in Para 2 above as the four disabilities are unrelated functionally the composite assessment will be 100% (arithmetic sum of individual disabilities). However functionally the individual is not 100% disabled, as he is ambulant and is able to carry out all his routine functions and activities of daily living. Besides the individual was released in low medical and not invalided out, there by indicating that he was also able to perform his mil duties in sheltered appointment.

(b) Member 'B' has three disabilities- (i) Primary Hypertension- 30%, (il) Uveitis with defective vision-30% and (il) IHD- 40%. As per the laid down policy the composite assessment in this case could be either 70% or 80% as ID (1) and (fli) are overlapping. This is a reason for variation in computation of the composite assessment, by various medical boards.

(c) Member 'C' has four disabilities-(i) Hypertension-30%, (il) Fracture Tibia (RI) -20%, (ili) Fracture Calcanium (Rt) -15-19% and (iv) Amputation index finger (RI) -11-11%. As the ID (it) and (i) are affecting the same limb there is a functional overlap hence the composite assessment in this case as per existing rules can vary from 60% to 70% Again a reason for variation between medical boards in computing composite assessment."

11. In light of above revelation, it is well established that there has been error by the Medical Board in computation of composite disabilities. As regards the contention of the respondents regarding the sanctity of assessment of medical board as in case of Ministry of Defence and Others Vs. Damodaran A.V.(D) through LRs and

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Ors.(supra), the issue has been adequately elaborated in the case of Veer Pal Singh Vs Secretary, Ministry of Defence (Civil Appeal No. 5922/2012) wherein the Hon'ble Supreme Court have held the medical opinion is to be respected and not worshipped and, therefore, judicial review of the opinion can be carried out if an error on the part of medical authorities is *prima facie* established.

12. In the light of above discussion, the diseases in the instant case being different in different functional effects the calculation should have been as follows:-

(a) Disability (i) - 30%

(b) Disability (ii) - $100 - 30 = 70 \times \frac{30}{100} = 21\%$

(c) Disability (iii) - $70 - 21 = 49 \times \frac{20}{100} = 10\%$ (rounded off)

Total = 61 %

13. Regarding broadbanding benefits, we find that the *Hon'ble Supreme Court in its order dated 10.12.2014 in Union of India v. Ram Avtar, Civil Appeal No. 418 of 2012* and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions

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for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

14. Applying the above parameters to the case at hand, we are of the view that the applicant has been discharged from service in low medical category on account of medical disease/disability, which have been attributable to or aggravated by military service.

15. Therefore, in view of our analysis, the OA is allowed and Respondents are directed to *grant benefit of disability element of pension compositely @ 61% for life* (for PRIMARY HYPERTENSION @30% for life, TEAR LATERAL MENISCUS (RT) KNEE (OPTD) @ 30% for life and LOW BACKACHE WITH PIVID L4-5 @20% for life), *rounded off to 75%* in view of judgment of Hon'ble Apex Court in *Union of India versus Ram Avtar* (supra) from the date of discharge i.e. 31.08.2005. However, the arrears will be restricted to three years from the date of filing of this OA or the date of applicant's retirement/discharge, whichever is lesser, in keeping with the law laid down in the case of *Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649]*. The arrears shall be disbursed to the applicant within four months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

16. Consequently, the O.A. is allowed.

17. No order as to costs.
18. Miscellaneous applications, if any, pending stand closed.

[RAJENDRA MENON]
CHAIRPERSON

[C P MOHANTY]
MEMBER (A)

/ps/