

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

B.

OA 847/2019 with MA 1488/2019

Ex LS (RP) Surinder Kumar **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
01.11.2023

Vide our detailed order of even date, we have allowed the OA 847/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of 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 to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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ORDER

OA 847/2019

The applicant vide the present OA seeks the following prayers:-

“

- (a) *Quash the Impugned Order Letter No. PEN/600/D/LRDOI:01/2018/134658T dated 13.12.2017.*
- (b) *Direct respondents to grant Disability Element of Pension to the applicant duly rounded off to 50% w.e.f. his date of discharge i.e. 01.02.2018.*
- (c) *Direct respondents to pay the due arrears of disability pension/ Invalid 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 the fact and circumstances of the case along with cost of the*

application in favour of the applicant and against the respondents."

2. The applicant Ex LS (RP) Surinder Kumar No. 34658-T joined the Indian Navy on 27.01.2003 and was discharged on 31.01.2018 on expiry of engagement with 15 years and 05 days of qualifying service. The applicant was sanctioned Service Pension vide PPO No. 248201800408 dated 20.01.2018. At the time of his discharge, he was placed in Low Medical Category S3A2(P) PMT for the disability **"FIBROCAVITARY DISEASE (RUL/RML) POST TUBERCULAR ICD No. B-90, A-15.0, Z-09.0"**. The Release Medical Board had assessed the disability 'Attributable to; But not Aggravated by the Service' with assessment of 15-19% (less than twenty percent) for life (vide Para 25 Chapter VII GMO 2005 for life and final) but with the net assessment qualifying for disability pension is recorded as 'Nil' for life (Annexure R-2). Therefore, his claim for grant of disability pension was rejected by the Competent Authority vide letter No. PEN/600/D/LRDO/1:01/2018/134658T dated 13.12.2018 and he was advised to prefer an appeal against the rejection within six months from the date of receipt of the rejection letter. Though the applicant through the present OA has submitted that he filed a First Appeal dated 13.11.2018, the respondents have submitted that they have not received the same. In the interest of justice, we take the present OA for consideration in terms of Section 21(1) of the AFT Act, 2007.

3. The applicant contends that in as much as the disability of **“FIBROCAVITARY DISEASE (RUL/RML) POST TUBERCULAR ICD No. B-90, A-15.0, Z-09.0”** has been opined by the RMB dated 24.07.2017 to be attributable to military service ‘vide AMB conducted at CTC Pune dated 29.01.2005’, he ought to be granted the disability element of pension as the disability having been assessed at 15-19% for life that is less than 20% for life by the RMB vide Para 25 Chapter VII of the GMO 2005 (as per the said RMB which apparently relates to Para 25 of Chapter VII of the GMO 2008) is erroneous.

4. On behalf of the applicant reliance was placed inter alia on Para 25 of Chapter VII of the GMO (Military Pensions) 2008 itself which was also relied upon on behalf of the respondents which Chapter VII relates to assessment that is the evaluation of a disablement for pension purposes as defined vide Para 2 thereof which reads to the effect:-

“2. The evaluation of a disablement for pension purposes is called assessment. Basis of assessment.”

5. Para 25 of Chapter VII of the said GMO which reads to assessment that is the evaluation of a disablement for pension purposes in relation to Pulmonary Tuberculosis and its assessment is as under:-

*“25. Assessment of extent of disablement should be done on the basis of subjective and objective parameters like clinical examination, and evaluation of functional capacity with
(a) Range of chest expansion*

(b) *Exercise tolerance like 12 minutes walking test*

(c) *Presence of any evidence to suggest pulmonary hypertension, right ventricular hypertrophy and/or evidence of cor pulmonale.*

(d) *Spirometry when available should be carried out to estimate functional capacity. Vital capacity above 70% of normal can be taken as normal lung function amounting to disability of less than 20%. The degree of disablement on invalidment from a service hospital will be regarded as 100 per cent for one year in cases which are "capable of improvement" and as 100 per cent for two years in cases which are regarded as "incapable of improvement". Thereafter, the assessment will be made as follows :*

(a) Capable of improvement. In this condition, assessment depends upon whether disability is quiescent, arrested or cured/recovered, as defined in para 81 of chapter VI. A quiescent case, will be assessed at 50- 100 per cent for two years; an arrested case at 20-50 per cent for three years; and a cured/recovered case at less than 20% final.

(b) Incapable of improvement. If the reassessment Medical Board confirm the initial findings that the disability is incapable of improvement a life award for 100 per cent disablement will be granted. If, on the other hand, the Reassessment Medical Board finds that there has been an improvement they will classify the disability as capable of improvement, and the degree of disablement will be assessed as in (a) above. Disablement for cases after surgical treatment will depend upon functional incapacity suffered due to the disease and the effects of surgical treatment. An individual with a quiescent or arrested lesion may be employed, but the assessment will not be reduced because the individual is capable of earning his livelihood."

6. As per Para 26 of the said GMO 2008 reflected in Chapter VII thereof, the assessment of Chronic Bronchitis is to the effect :-

"26. (a) Without emphysema 20-40%

(b) With emphysema 40-60%

(c) If the circulatory system is 50-80% also affected

(d) With signs of heart failure 80-100%”

7. Para 7 of Chapter VII of the GMO (Military Pensions) 2008 is as under:-

“Principles of Assessment.

7. The assessment of a disability for pension purposes is the estimate of the degree of disablement it causes, which can properly be ascribed to service. The disablement properly referable to service is assessed slightly differently at the time of discharge from the forces.”

8. As per Para 28 of Chapter VII of the GMO (Military Pensions) 2008 the assessment of Bronchiectasis is to the effect :-

“28. It is common sequelae to pneumonias more so in tubercular pneumonia assessed at 20-30%”

9. The assessment of lung diseases in Para 24 of Chapter VII of the GMO (Military Pensions) 2008 is as under :-

“24. Assessment of lungs is broad based, should take into account clinical, radiological, anatomical and functional states of lung. 80 Apart from these, the degree of disablement due to lung disease can be evaluated by spirometric data, clinical bed side tests (6 minutes walk single breath counting, capacity to blow candle and ECG) spirometry indicates the presence of obstructive and restrictive lung diseases.”

10. It is thus the contention of the applicant that under no circumstances can the disability of the applicant which relates to **FIBROCAVITARY DISEASE** and which is pursuant to the applicant having suffered from Pulmonary Tuberculosis as is also reflected in the

opinion of the specialist in Part I Patient's Particulars annexed to the RMB which are as under where the previous classification details have been given are to the effect :-

“Previous Classification details (Date and Category of each and every category to be mentioned).

Ser.	Date	Diagnosis	Category
(a)	13 Jul 2005	Pulmonary Tuberculosis	S3A3(P) T-24
(b)	10 Feb 2006	Pulmonary Tuberculosis	S2A2(P) T-24
(c)	20 Aug 2006	Pulmonary Tuberculosis	S2A2(P) T-24 + T-24
(d)	28 Apr 2007	Pulmonary Tuberculosis	S2A2(P) Pmt
(e)	29 Apr 2009	Pulmonary Tuberculosis	S2A2(P) Pmt
(f)	07 Sep 2010	Fibrocavitary Disease (RUL/RML) Post Tubercular	S3A2(P) Pmt
(g)	29 Mar 2011 and 28 Jun 2013	Fibrocavitary Disease (RUL/RML) Post Tubercular	S3A2(P) Pmt
(h)	28 Apr 2015	Fibrocavitary Disease (RUL/RML) Post Tubercular	S3A2(P) Pmt

”

with the clinical assessment having stated to the effect :-

“

1. History

(a) Location of onset: Peace/Field/High Altitude/CI Ops. LCU 34, Kochi.

(b) Date and Time of onset: November 2004

(c) Relevant History: 33 years old serving sailor k/c/o Post Tubercular Fibrocavitary disease in LMC. He has reposted for re-categorisation. He has history of occasional mild haemoptysis during winter months.”

to thus submit that the disability of the applicant cannot be assessed at less than 20%.



12. On a perusal of paragraphs 24, 25, 26, 27 and 28 of Chapter VII of the GMO (Military Pensions) 2008 it is clearly indicated that the evaluation of disablement of lung diseases cannot be assessed at less than 20% for life and taking into account the factum that the RMB in the instant case has opined the duration of the disability as being for life @15-19%, the disablement percentage in terms of paragraphs 24 to 28 of Chapter VII of the GMO (Military Pensions) 2008 in relation to the disability of **"FIBROCAVITARY DISEASE (RUL/RML) POST TUBERCULAR ICD No. B-90, A-15.0, Z-09.0"** cannot be quantified at less than 20% for life.

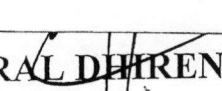
13. In as much as the disability of the applicant has already been opined by the RMB to be attributable to military service with the assessment of the disability in question having necessarily to be quantified with the percentage of the disablement at not less than 20% for life, the applicant is held entitled to the grant of the disability element of pension for the disability **"FIBROCAVITARY DISEASE (RUL/RML) POST TUBERCULAR ICD No. B-90, A-15.0, Z-09.0"** @20% for life to be broad banded to 50% for life in terms of the verdict of the Hon'ble Supreme Court in *Union of India & Ors. vs. Ram Avtar* in Civil Appeal No. 418/2012 from the date of his discharge.

CONCLUSION

14. The applicant thus in the instant case is held entitled to the grant of the disability element of pension for the disability of **“FIBROCAVITARY DISEASE (RUL/RML) POST TUBERCULAR ICD No. B-90, A-15.0, Z-09.0”** assessed @20% which is directed to be broad banded to 50% for life in terms of the verdict of the Hon'ble Supreme Court in Civil No. 418/2012 dated 10.12.2014 titled as *Union of India & Ors. vs. Ram Avtar* w.e.f. the date of his discharge. The OA 847/2019 is thus allowed.

15. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from the date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to the interest @6% per annum till the date of payment.

Pronounced in the open Court on the 1st day of November, 2023.


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER (J)

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