

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

OA 302/2018 with MA 191/2018

Ex Nb Sub Dalip Kumar Mishra

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri J.P. Sharma, Advocate

For Respondents : Shri Anil Gautam, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

MA 191/2018

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.

2. MA stands disposed of.

OA 302/2018

3. 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) To quash and set aside the impugned letter dated 23.09.2016 as Annexure A-1 Impugned order.

- (b) Direct Respondents to grant Disability Element of Pension to the applicant by treating his disability "PERSISTENT DELUSIONAL DISORDER" with assessed @20% for life as attributable to or aggravated by military service as it has caused due to weather condition as accepted stress and strain of service as law already settled by the Hon'ble Supreme Court various cases in Dharamvir Singh Vs UOI & Ors (2013) 7SCC 316, latest of UOI & Ors Vs Rajbir Singh (Civil Appeal No 2904 of 2011 decided on 13.02.2015 and Case No CA-5605/2010 titled Sukhvinder Singh Vs UOI (2014 STPL(web) 468 SC) decided on 25.6.2014,. And/or**
- (c) Direct Respondents to grant Disability Element of Pension @20% to @50% wef 04.01.2015 to for life in terms of Gol, MoD letter dated 31.01.2001 and Civil Appeal No 418/2012 titled UOI & Ors Vs. Ram Avtar vide judgment dated 10.12.2014 alongwith 10% annual interest till the payment be made, for which the applicant deserves.**
- (d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case. "**

BRIEF FACTS

4. The applicant was enrolled in the Indian Army on 05.04.1999 and was invalided out of service on 04.01.2015 in terms of Item-I(ii) of Rule 13(3) of Army Rules, 1954. The Invalidment Medical Board (IMB hereinafter) dated 04.12.2014 found the applicant fit to be released in the low medical categories S5H1A1P1E1 for the disability (i) Persistent Delusional Disorder @ (1-5%) and S1H1A1P2E1 for the disability (ii) Simple Obesity @ (1-5%) for life, compositely assessed @1-5% for life while the net

qualifying element for disability was recorded as NIL for life on account of both the disabilities being treated as neither attributable to nor aggravated by military service

5. The applicant submitted the First Appeal dated 14.11.2015 and the same was rejected and communicated to the applicant vide letter dated 23.09.2016. Aggrieved by this, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21(2) of the AFT Act, 2007, we take up the same for consideration.

CONTENTIONS OF THE PARTIES

6. 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 Army 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. It is further submitted on behalf of the applicant that since he

had served at Field/Semi Field area and previous to his last posting, he was posted at HAA i.e. Drass Sector J & K and the disability Persistent Delusional Disorder occurred within one year of the HAA posting, the said disability should be treated as aggravated by military service.

7. On behalf of the applicant, reliance was also placed on the verdicts of the Hon'ble Supreme Court in the case of **Union of India and Others Vs. Manjit Singh** AIR 2015 SC 2114, **Union of India Vs. Rajbir Singh** 2015(12) SCC 264 and **Sukhvinder Singh Vs Union of India**, UoI 2014 (14) SCC 364, 2014(8) SCALE 619 2015 (3) SLR 5 and also on the orders of AFT (RB) Chandigarh in OA No. 621/2014 titled **Bharat Kumar Vs. UoI & Ors**, OA No. 1235/2014 titled **Hoshiar Singh Vs. UoI & Ors.**, and OA No. 480/2015 titled as **Jasbir Singh Vs. UoI & Ors**. The applicant also placed specific reliance on the judgment of the Hon'ble High Court of Madras in W.P. No. 27217/2023 titled **Ex-Gnr C.Puratchidasam Vs. AFT (RB) Chennai & Ors.**, and on the order of the AFT, Principal Bench, New Delhi in OA No. 1204/2019 titled **Ex Hav (ACP-1) Satnarain Singh vs. UOI & Ors.**, wherein similarly situated personnel were given relief.

8. *Per contra*, the learned counsel for the respondents submits that under the provisions of Para 173 of the Pension Regulations for the Indian Army, 1961 (Part-1), the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by military service and is assessed 20% or more and applicant's both disability are assessed less than 20% i.e. (1-5%) by the IMB thus, the applicant is not entitled to the grant of the disability element of pension.

ANALYSIS

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

10. It is undisputed that at the time of his invalidating from service, the applicant was brought before the IMB and his both the disabilities (i) Persistent Delusional Disorder @ (1-5%) and (ii) Simple Obesity @ (1-5%) were opined to be 'neither attributable to nor aggravated by military service' and not connected with service. The said disabilities were assessed @1-5% individually and compositely assessed at less than 20% (1-5%).

11. As per Para 173 of the Pension Regulations for the Army, 1961, (Part-1), "disability pension" consisting of service element, disability element may be granted to an individual who is invalided out of service on account of disability which has been attributable to or aggravated by military service in non battle casualty and is assessed at 20% or over. Hence, on a bare reading of the above Regulation, it is clear that an officer retired from service is entitled to disability pension only if disability is assessed at 20% or above and also the disability must be attributable to or aggravated by military service.

12. In the case in hand, since the IMB has assessed the disability of the applicant at 1-5% (less than 20%) for life, with regard to the issue relating to entitlement of disability pension when the assessment of a disability by the RMB is less than 20% (1-5%), we may refer 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. 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 a Air Force Officer who superannuated from service in the natural course and whose disability is less than 20%. xxx 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.”

13. 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

disability element if the disability is less than 20%.

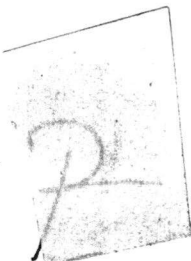
Relevant portions of the said judgment read as under:

“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%.”

14. Thus, in view of the circumstances of the instant matter, the applicant's disabilities do not meet the twin criteria as per Para 173 of the Pension Regulations for the Indian Army, 1961 (Part-1) and thus we do not find any infirmity in the opinion of the IMB denying the disability element of pension to the applicant for the said disabilities being neither attributable to nor aggravated by military service and being assessed @1-5%, the applicant thus is not entitled to the grant of the disability element of pension.

CONCLUSION

15. In view of the aforesaid analysis and the parameters referred to above, there being no infirmity in the opinion of



the RMB, the OA 302/2018 stands dismissed being devoid of merits.

16. There is no order as to costs.

Pronounced in the open Court on this day ^{RM} 12 of November, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/nmk/