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

OA 43/2022 with MA 1020/2023 & 51/2022

SEA-1 Arun Singh Rathore(Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Shri Ramnivas Bansal , Advocate
For Respondents : Shri Avdhesh Kumar Singh, Advocate

CORAM
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT. GEN. P.M. HARIZ , MEMBER (A)

O R D E R
20.11.2023

MA 51/2022

This is an application filed under Section 22 of the Armed Forces Tribunal Act, 2007, seeking condonation of delay of 1612 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***Uol & Ors*** Vs. ***Tarsem Singh*** 2009(1) AISLJ 371 and in ***Ex Sep Chain Singh*** Vs. ***Union of India & Ors*** (Civil Appeal No. 30073/2017) and the reasons mentioned, the MA 51/2022 is allowed and the delay of 1612 days in filing the OA 43/2022 is thus condoned. The MA is disposed of accordingly.

OA 43/2022

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

> *"(a) To quash and set aside the Applicant's RMB proceedings to the extent the order denies grant of disability element of pension to applicant.;*
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> *(b) To set aside the impugned order and direct the respondents to grant disability element of pension @ 30% broad-banded to 50%, along with arrears & interest @ 12% p.a. w.e.f date of discharge, by treating disease as attributable to and aggravated by military service, along with all consequential benefits, in view of the Hon'ble Apex Court Judgement in Rajbir Singh(supra) and Dharamvir Singh(supra), or*
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> *(c) To pass any other order, direction/directions as this Hon'ble Tribunal deem fit and proper in accordance with law."*

2. Briefly, the facts of the case are that the applicant was enrolled in the Indian Navy on 31.07.2002 and was discharged from service on 31.07.2017 after completing a qualifying service of 15 years & 1 day. The Release Medical Board (RMB) was conducted on 15.03.2017 which assessed the disabilities of the applicant, i.e., ID(I) HYPERHOMOCYSTEINEMIA @ 15-19%, ID (II) OVERWEIGHT @ 1-5%, ID(III) DYSLIPEDEMIA @ 1-5%, ID(IV) LEFT MCA ISCHEMIC STROKE @ 1-5, wherein ID(I),(II),(III) were categorized as neither

attributable and aggravated by naval service(NANA), ID(IV) was categorized as aggravated by naval service. The composite assessment for the disability was assessed at 30% for life by the RMB and the disability qualifying for disability pension was stated as nil for life. The disability pension claim was rejected and communicated to the applicant vide letter dated 30.05.2017. Aggrieved by this, the applicant submitted the first appeal vide dated 15.11.2021 for grant of disability pension and its rounding off, however, the outcome of the same is still awaited since the applicant was required to provide the requisite documents. Hence, this OA.

Contention of the Parties

3. Learned counsel for the applicant stated that after a thorough medical examination, the applicant was enrolled into the Indian Navy and there was no note of any disability recorded in his service records. It is further contended that he served in the Navy at various places in different environmental and service conditions in his prolonged service; therefore, any disability occurring during the period of his service is deemed to be attributable to or aggravated by the service. In support of his contentions, learned counsel relied upon the judgments of the Hon'ble Supreme Court including ***Dharamvir Singh*** Vs. ***Union of India*** [(2013) 7 SCC 316], ***Union***

of India & Ors. Vs. ***Rajbir Singh,*** [(2015)12 SCC 264] and ***Union of India & Ors.*** Vs. ***Ram Avtar*** [Civil Appeal No.418 of 2012] decided on 10.12.2014 as well as various orders of the Tribunal to submit that since the applicant was discharged from service being in low medical category(LMC), the disability must be presumed to have arisen during service and is thus entitled to the disability pension with the benefit of rounding off to 50%. Learned counsel, therefore, contended that the respondents committed an error in rejecting the claim of the applicant for disability pension to which he is entitled to.

4. *Per contra*, learned counsel for the respondents controverted the arguments put forth on behalf of the applicant and contended that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found that net assessment of all disabilities was recorded as @ NIL for life, which makes him ineligible for grant of disability pension as per Reg 105-B of Navy Pension Regulation 1964 wherein it is stipulated that the disability should be either attributable to aggravated by the Naval service and minimum assessment for the grant of disability is mandatorily required to be 20% or more. Hence, learned counsel prayed that the OA may be dismissed.

Consideration

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

6. In the case of the applicant all his four disabilities are by themselves individually less than 20%; ID(I) HYPERHOMOCYSTEINEMIA @ 15-19%, ID (II) OVERWEIGHT @ 1-5%, ID(III) DYSLIPEDEMIA @ 1-5% and ID(IV) LEFT MCA ISCHEMIC STROKE @ 1-5. Further the RMB held only ID(IV) as being aggravated by naval service. The applicant has not been able to demonstrate how the other three disabilities have any causal connection to the service for them to be attributable or aggravated to military service.

7. With regard to the issue of admissibility of disability pension when the disability was assessed at less than 20%, the Hon'ble Supreme Court in its judgment in the case of ***Union of India & Ors.*** Vs. ***Wing Commander S.P. Rathore*** [Civil Appeal No.10870/2018] decided on 11.12.2019, has 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 an 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.*
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> *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.*
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> *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.*
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> *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.*
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> *The appeal is allowed accordingly."*

8. The Hon'ble Supreme Court in its judgment in the case of ***Bachchan Prasad*** Vs. ***Union of India & Ors.*** [Civil Appeal No.2259 of 2012] dated 04.09.2019 also held that an individual is not

entitled to disability element if the disability is less than 20% 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, as his disability is less than 20%."*

9. The Hon'ble Supreme Court in its judgment in the case of ***Secretary, Ministry of Defence & Others*** Vs. ***Damodaran A.V. (dead) through LRs. & Others*** [(2009) 9 SCC 140], clearly laid down the following principles with regard to primacy of medical opinion:-

> *"8. When an individual is found suffering from any disease or has sustained injury, he is examined by the medical experts who would not only examine him but also ascertain the nature of disease/injury and also record a decision as to whether the said personnel is to be placed in a medical category which is lower than 'AYE' (fit category) and whether temporarily or permanently. They also give a medical assessment and advice as to whether the individual is to be brought before the release/ invalidating medical board. The said release/invaliding medical board generally consists of three doctors and they, keeping in view the clinical profile, the date and place of onset of invaliding disease/disability and service conditions, draws a conclusion as to whether the disease/injury has a causal connection with military service or not. On the basis of the same they recommend (a) attributability, or (b) aggravation, or (c) whether connection with service. The second aspect which is also examined is the extent to which the functional capacity of the individual is impaired. The same is adjudged and an assessment is made of the percentage of the disability suffered by the said personnel which is recorded so that the case of the personnel could be considered for grant of disability element of*

pension. Another aspect which is taken notice of at this stage is the duration for which the disability is likely to continue. The same is assessed/ recommended in view of the disease being capable of being improved. All the aforesaid aspects are recorded and recommended in the form of AFMSF-16. The Invalidating Medical Board forms its opinion/ recommendation on the basis of the medical report, injury report, court of enquiry proceedings, if any, charter of duties relating to peace or field area and of course, the physical examination of the individual.

9. The aforesaid provisions came to be interpreted by the various decisions rendered by this Court in which it has been consistently held that the opinion given by the doctors or the medical board shall be given weightage and primacy in the matter for ascertainment as to whether or not the injuries/illness sustained was due to or was aggravated by the military service which contributed to invalidation from the military service."

10. In the light of the above considerations, we conclude that since the disability of the applicant does not meet the eligibility criteria of for getting disability pension as the RMB assessed the disability at less than 20% for each disability including ID(IV) 'LEFT MCA ISCHEMIC STROKE' , the applicant is not entitled to the disability element and consequently not entitled to disability element of pension. Accordingly, the OA stands dismissed.

11. No order as to costs.

12. MA if any, stands disposed.

Pronounced in the open Court on 17 day of September, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HARIZ]
MEMBER (A)

/ashok/