

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

O.A. 1786 of 2018 WITH MA 1976/2018

Ex Hav Satender Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate

For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM:

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

ORDER

MA 1976/2018

Keeping in view the averments made in this application and finding the same to be bona fide, in the light of the decision in the case of the *Union of India & Ors. Vs. Tarsem Singh* [(2008) 8 SCC 648], the instant application is allowed condoning the delay in filing the OA.

2. MA stands disposed of.

O.A. 1786 of 2018

3. Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the

applicant has filed this OA and the reliefs claimed in Para 8 read as under:

- (a) *Quash and set aside the impugned letter no. RNE/DP/2891989 dated 25.08.2017 and/or*
- (b) *Direct the respondents to treat the disability of the applicant as attributable to or aggravated by military service and grant him disability element of pension along with rounding off/broad banding benefits and/or*
- (c) *Direct the respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of discharge. And/or*
- (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, having been found mentally and physically fit after thorough medical examination, was enrolled in the Indian Army on 27.08.1996 and discharged from service on 30.11.2013 on completion of 17 years 03 months and 04 days of service. The Release Medical Board held on 31.08.2013 found the applicant fit to be released in the low medical category P₂ (P) for the disability of Myxomatous Mitral Valve (with MVP GD-1) @ 1-14% for life while the net qualifying element for disability was recorded

as NIL for life on account of the disability being treated as neither attributable to nor aggravated by military service.

5. The initial claim of the applicant for grant of the disability pension was rejected by the competent authority and the said decision was communicated to the applicant vide letter dated 21.02.2014 with an advice that in case, the applicant is not satisfied with the decision of the respondents, he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the letter. However, the applicant did not submit any appeal against rejection of disability element of pension but preferred Legal Notice dated 06.07.2017, and the same was rejected by the respondents vide letter dated 25.08.2017. Aggrieved by this, the applicant has filed the present OA on 22.10.2018. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was

declared fully fit mentally and physically and no note of disability was made in his medical record at the time of entering the service and any medical disability contracted by him during the course of his service should be treated as being attributable and aggravated by the stress and strain of his service. The learned counsel explained about the stressful and challenging conditions of service undertaken by the applicant during his entire service tenure. The learned counsel submitted that the applicant was posted at various stations (Peace and Field) and had served in tough and different weather and environmental conditions in his career and discharged all assigned duties with utmost dedication in a well-disciplined and professional manner and thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

5. The learned counsel for the applicant further contended that the instant matter is squarely covered by a catena of judgments of the Hon'ble Supreme Court such as ***Dharamvir Singh Vs. Union of India & Ors.*** [2013 (7) SCC 316], ***Union of India and Anr. Vs. Rajbir Singh***

[2015(2) SCALE 371], in **Sukhvinder Singh Vs. Union of India & Ors** [2014 STPL (WEB) 468 SC], and in Civil Appeal No. 418/2012 **titled as Union of India & Ors. vs. Ram Avtar** decided on 10.12.2014, wherein similarly situated personnel were given relief.

6. Per contra, the learned counsel for the respondents contended that the applicant is not entitled to the relief claimed since the RMB, being an Expert Body, found the disability as "Neither Attributable to Nor Aggravated by Military Service" on the ground that the disability was a congenital valvular heart disease and that the applicant was treated promptly and is unaffected by service conditions and the said disability of the applicant was of constitutional in nature. The learned counsel contended that the applicant's disability does not qualify for the disability pension in view of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-1), which provides that the disability pension is granted to the individual released/retired/discharged from service when the disability should be either attributable to or aggravated by military service and minimum assessment thereof is mandatorily

required to be 20% or more and in this case both the requirements for grant of disability element of pension is not met. Therefore, the OA deserved to be dismissed.

ANALYSIS

7. Having heard both sides, the only issue that requires to be adjudicated is whether the applicant, for whom RMB held his ID Myxomatous Mitral Valve (with MVP GD-1) being less than 20% (11-14%), not attributable to or aggravated by military service is entitled to disability element of pension or not.

8. With regard to the disability in question i.e. 'Myxomatous Mitral Valve (with MVP GD-1)', it is pertinent to mention herein that after perusal of available scientific literature in public domain, we find that the disability Myxomatous Mitral Valve is a congenital/hereditary disease which presents in a person at birth. Thus, the contention of the applicant that the disability in question has any causal connection whatsoever with the performance of military service for the grant of disability pension is misconceived. In this regard, we may refer to Para 83 of the Guide to Medical Officers (Military

Pensions), 2002 amendment 2008 (hereinafter referred to as 'GMO (MP) 2008'). The same reads as under:-

"83. Valvular Heart Disease. The principal causes of valvular heart disease are Rheumatic carditis, other causes being congenital, ischemic heart disease, infective endocarditis and cardiomyopathy. It takes several years for valvular disease to develop from the onset of rheumatic fever. Attributability or aggravation can be conceded by judging the merit of each case and also considering the primary disease. Mitral valve prolapse (floppy mitral valve) is commonly detected in Armed Forces. It is primarily a congenital abnormality. Hence it will be conceded as neither attributable nor aggravated by military service."

with regard to congenital heart disease, Para 22 of the GMO (MP) 2008 can also be relied upon, which reads as under:-

"22. Congenital Heart Disease. It has been routinely observed that cases of congenital heart diseases like atrial septal defect/Mitral valve prolapse having escaped detection at the time of recruitment become symptomatic and detected very late in service. These will be conceded as neither attributable nor aggravated by military service."

9. From the aforesaid provisions, it is clear that the disability 'Myxomatous Mitral Valve' is a congenital heart disease, detection of which could escape during the medical

examination held before joining service and can be detected very late in service. In view of this, it is apparent that the disability of the applicant has no nexus with service and has no causal connection with the military service since the applicant's disability is congenital which has no relationship with the performance of any military duty. The RMB has, therefore, rightly assessed the disability of the applicant i.e. 'Myxomatous Mitral Valve' as neither attributable to nor aggravated by service.

10. In the case in hand, since the Medical Board has assessed the disability of the applicant as 11-14% (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% (11-14%), 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.”

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 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%.”

12. Thus, in view of the circumstances of the instant matter, we do not find any infirmity in the opinion of the Release Medical Board denying the disability element of pension to the applicant for the said disability being neither attributable to nor aggravated by military service and being assessed @11-14%, the applicant thus is not entitled to the grant of the disability element of pension.

CONCLUSION

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

the RMB, the OA 1786/2018 stands dismissed being devoid of merits.

14. There is no order as to costs.

Pronounced in the open Court on this 29 day of July,
2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (J)

/nmk/