Item No.
119

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

OA No. 1116/2018

Ex Hav Hukum Singh ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Mr. JP Sharma, Advocate
For Respondents : Mr. Prabodh Kumar, Advocate

CORAM :
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)

O R D E R
16.04.2024

This OA has been filed by the applicant under Section 14 of AFT Act, 2007 to grant disability pension @80% instead of 70% w.e.f. 01.10.2005 with the benefits of rounding off disability pension of @80% to 100% for life.

2. Consequent to our directions dated 05.12.2023 directing the respondent to produce documents vide which the disability (b) BILATERAL ADHESIVE OTITIS MEDIA WITH SEVERE MIXED HEARING LOSS BOTH EAR was assessed @30% for life despite Release Medical Board dated 31.05.2005 having assessed the said disability with percentage @40% for life, the respondents have filed an affidavit which reads to the following affect:-

"1. That, No 3175154L Ex Hav Hukam Singh has filed OA No 1116/2018 for grant of Disability Pension @ 80% instead of @ 70% with effect from 01 Oct 2005 and thereafter benefits of Rounding Off Disability Pension @ 80% to @ 100% with effect from 01 Oct 2005 for life. OA was last listed on 05 Dec 2023 with directions to the respondents to state whether reduction of the disability assessment is in relation to the disability (b) Blant Aphesive Otitis, after the Release Medical Board dated 31.05.20205 or the applicant had been medically examined by any higher authority, comprising to Release Medical Board dated 31.05.2005".

2 That, prior to discharge from service the petitioner was brought before Release Medical Board held at Military Hospital, Meerut wherein disabilities of the petitioner were assessed as under :-

Ser No	Disabiliity	Percentage of Disability Assessed by				PPO NO & Date
		RMB	Composite Assessment	Medical Advisor (Pension)	Composite Assessment by Medical Advisor (Pension)	
(a)	COMPRESSION FRACTURE LV1 WITH SPINAL CORD INJURY	40% for life	80% for life	40% for life	70% for life	DE/010835/2006 Dated 08 May 20
(b)	BILAT ADHESIV OTITIS MEDIA WITH SEVERE MIXED HEARIN LOSS	40% for life		30% for life		

3. Methodology for calculation is held with PCDA (Pension), Prayagraj being Pension Sanction Authority. Accordingly comments have been sought for the same vide Records The JAT Regiment letter No 3175154/LC-2/JR dt 22 Dec 2023 and even letter dt 05 Jan 2024 (Copies att). However, no comments from PCDA(Pension), Prayagraj recd till dt inspite of repeated request & reminders and evenafter teleconversations by Senior Record Officer of Records The JAT Regiment.

4. That, the petitioner was not examined after the Release Medical Board dated 31 May 2005, by any higher authority."

3. At this moment, we find it pertinent to refer to Para 17A(i) of the Chapter VII, Guide to Medical Officers, 2008, extracted as under:

> *"17 A. Composite Assessment.*
> *(i) 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."*

4. On a perusal of the Medical Records and the analysis of the Para 17A, we observe that both the disabilities have entirely different functional effects, first with respect to Spinal Cord and second with respect to functional aspects of ear. Therefore, we find resonance in the guidelines laid down in GMO, 2008 that there is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases which is not correct.

5. In view of the aforesaid discussion, and considering the facts stated therein the aforesaid affidavit, we are of the opinion that the disabilities qua the applicant (a) COMPRESSION FRACTURE LV1 WITH SPINAL CORD INJURY @40% and (b) BILAT ADHESIVE OTITIS MEDIA WITH SEVERE MIXED HEARING LOSS @40% both held attributable to service and composite assessment of 80% for life as assessed by the Release Medical Board dated 11.05.2005 are upheld in view of the factum laid down by ***Hon'ble Supreme Court*** in the case of ***Controller of Defence vs S. Balachandran Nair 2005 (13) SCC 128, Secretary, Ministry Of Defence & Ors vs Damodaran A.V.(D) Thr.Lrs 2009 (9) SCC 140,*** and ***Delhi High Court*** in the case of ***Rajender Singh vs. Union of India (UoI) and Ors on 27 July, 2006*** upholding the primacy of the medical board.

6. Therefore, this OA is allowed and the respondents are directed to grant the benefits of Disability Pension to the applicant with a composite assessment of 80% for life rounded off to 100% for life w.e.f. 01.10.2005 as per settled law in the case of ***UoI V. Ram Avtar*** in Civil Appeal No. 418/2012.

7. The arrears shall be paid by the respondents to the applicant within a period of three months from the date of receipt of copy of this order, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

8. No order as to costs.

9. Pending application(s), if any, are disposed of.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT. GEN. C.P. MOHANTY]
MEMBER (A)

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