

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

B.

OA 1338/2016

Ex POME Raj Kishor Prasad Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Ms. Pallavi Awasthi, Advocate
For Respondents : Mr. Prabodh Kumar Sr CGSC

CORAM

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

ORDER
24.07.2024

Vide our orders of even date, we have allowed the application. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007 to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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For Applicant : Ms. Pallavi Awasthi, Advocate
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Reportable/Non Reportable

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Date: 24 July, 2024

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

ORDER

On being denied grant of disability pension, the applicant has filed this application under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the following reliefs:

- (a) To direct the respondents to grant the disability pension to the applicant by treating his disability as attributable to and aggravated by military service.
- (b) To direct the respondents to grant disability pension @20% from the date of invalidated out from service and @50% for life in terms of law settled by Hon'ble Supreme Court of India in Civil Appeal No.418/2012 titled as UOI & Ors. vs. Ram Avtar vide judgment dated 10.12.2014 as well as in a catena of judgments by this Hon'ble Tribunal.
- (c) To direct the respondents to pay the due arrears of disability pension with interest @18% p.a. with effect from the date of retirement with all the consequential benefits.

2. Having been found fit after detailed medical examination and physical test, the applicant was enrolled in the Indian Navy on 30th January, 1999 and discharged from service on 31st January, 2014 after putting in 15 years of service.

3. The Medical Board conducted at the time of release diagnosed the applicant with two diseases, namely, (i) Complete ACT Tear (LT) Knee, ICD No. M 23.5 and (ii) Medical meniscus Tear (LT) Knee ICD No.M23.1 assessing the same at 20% but neither attributable to nor aggravated by military service and accordingly PPO for service pension was issued.

4. The contention of the applicant is that any person released on superannuation in a lower medical category other than that in which he was recruited, as per Entitlement Rules, has to be treated as invalided out of service and since at the time of his entry into service he was found in fit medical condition, he should be deemed to have been invalided out of service and is thus entitled for disability pension. To substantiate his claim, the applicant has relied on the judgments of the Hon'ble Supreme Court in the cases of Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316], Union of India and Ors. Vs. Rajbir Singh (CA2904/2011) decided on 13th February, 2015,

Sukhvinder Singh Vs. Union of India and Ors. (2014 STPL (Web) 468 SC) decided on 25th June, 2014 and Union of India and Ors. Vs. Ram Aytar (CA No.438/2012) decided on 10th December 2014.

5. Negating the claim of the applicant the respondents have filed a detailed counter affidavit. It is their contention that as the Release Medical Board has mentioned the disability neither aggravated nor attributable to Navy service and NIL for life long, the applicant is not entitled to disability pension. It is further contended that as the applicant was discharged from service on expiry of his engagement after 15 years of qualifying service and not because of his disability; he cannot claim to have been invalided out of service. As regards rounding of, the respondents have contended that rounding of disability percentage is admissible only to those who are in receipt of disability element of pension and since the applicant was discharged after completion of his engagement, he is not entitled to broad banding.

6. We have heard learned counsel for the parties and have also gone through the medical board proceedings brought on record, originals of which have also been produced and seen by

us. It is evident from the medical record that the applicant suffered the disabilities while posted on INS Amba while playing inter departmental foot ball match in the year 2001 and while posted on INS Jamuna in the year 2007 he became LMC and an injury report was also submitted. The only question which needs to be answered is whether the disability of the applicant is attributable to or aggravated by Naval Service?

7. The law on attributability of a disability has already been settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh** (supra). In this case the Apex Court took note of the provisions of the Pensions Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers to sum up the legal position emerging from the same.

8. In view of the settled position of law on attributability, we find that the RMB has denied attributability to the applicant only by endorsing that the disabilities (i) Complete ACT Tear (LT) Knee, ICD No. M 23.5 and (ii) Medical meniscus Tear (LT) Knee ICD No.M23.1 are neither attributable to nor aggravated (NANA) by service as the disease is not related to service. This reasoning of RMB is not convincing and doesn't reflect the complete truth on this matter. The applicant was enrolled in

Indian Navy on 31.01.1999 and the disability has started after more eight years of Naval service i.e. in February 2007. We, therefore, are of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant in view of Dharamvir Singh (supra) and the disability of the applicant should be considered as aggravated by naval service. Moreover, as per the provision of Rule 9 (c) of the Entitlement Rules for Casualty Pensionary Awards to Armed Forces Personnel, 2008 read with Note 3, which reads as under, the applicant is entitled to the benefits of disability element:

“9. Duty

For the purpose of these Rules, a person subject to the disciplinary code of the Armed Forces shall be treated on ‘duty’.

XX XX XX

XX XX XX

- (c) *During the period of participation in recreation and other unit/sports activities organized or approved by service authorities and during the period of travelling in relation thereto.*

Note 3:

Injuries sustained by personnel of the Armed Forces in impromptu games and sports which are organized by or with the approval of the local service authority and death or disability arising from such injuries, will be regarded as having occurred ‘on duty’ for the purpose of these Rules.”

9. In view of Hon'ble Supreme Court judgment in the case of **Ram Avtar** (supra) the applicant is entitled for rounding off the disability pension from @20% to @50%.

10. In view of the above, the OA deserves to be allowed, hence **allowed**. The disabilities of the applicant i.e. (i) Complete ACT Tear (LT) Knee, ICD No. M 23.5 and (ii) Medical meniscus Tear (LT) Knee ICD No.M23.1 are to be considered as aggravated by Naval service. The applicant is in receipt service element. The respondents are directed to grant disability element of pension to the applicant @20% for life which would stand rounded off to 50% for life. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 6% per annum till actual payment.

11. No order as to costs.

12. Pending application(s), if any, also stands disposed of.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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