

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

1.

**MA 3101/2024 in OA 1695/2016**

**In the matter of :**

**Ex Sgt Satyavir Singh Choudhary** ... Applicant

**Versus**

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

**For Applicant** : Shri D.K. Sharma and Shri S.K.  
Vashista, Advocates

**For Respondents** : Shri Vijendra Singh Mahnidyan,  
Advocate

**CORAM :**

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

**ORDER**  
**09.08.2024**

Since the judgment in the matter has already been pronounced today, M.A. No. 3101 of 2024 stands disposed of having rendered infructuous.

**[JUSTICE RAJENDRA MENON]**  
**CHAIRPERSON**

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

/ng/

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**O.A. No. 1695 of 2016**

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**Ex Sgt Satyavir Singh Choudhary** ... Applicant

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

**For Applicant** : Shri D.K. Sharma, Advocate

**For Respondents** : Dr. Vijendra Singh Mahndiyani, Advocate

**CORAM :**

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

**ORDER**

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

**A. Direct the respondents to grant and pay disability pension to the applicant @ 50% by giving the benefit of rounding off of disability pension from the date of his discharge i.e. w.e.f. 01/07/2003 in the light of law laid down by Hon'ble Supreme Court along with interest @ 18%**

*per annum alongwith all consequential benefits;  
and*

*B. To award any other/further relief which  
this Hon'ble Tribunal may deem fit and proper in  
the facts and circumstances of the case  
alongwith cost of the application in favour of the  
applicant and against the respondents.*

2. The facts in brief are that the applicant, having been found medically and physically fit, was enrolled in the Indian Air Force on 10.06.1983 and on completion of his terms, he was discharged from service on 30.06.2003 in low medical category 'BEE(P)'. Before his discharge, the applicant was brought before the Release Medical Board (RMB) which was held in June, 2002. The RMB assessed the applicant's disability of the applicant 'ECG ABNORMALITY (WPW SYNDOROME)' and it was assessed @ 15-19% for five years. However, the disability was held as 'neither attributable to nor aggravated by military service' (NANA), being constitutional in nature, based on which, the disability pension was denied to the applicant. Hence, this OA.

3. The initial claim for grant of disability pension of the applicant was rejected by the PCDA (P) Allahabad, as intimated to the applicant vide Air Force Record office letter dated 29.11.2004. Against the rejection of the claim, the applicant preferred the first appeal dated 30.04.2005 which was also rejected and the decision was intimated by the respondents vide their letter dated 20.04.2006. Thereafter, the applicant preferred the second appeal dated 25.05.2006. The applicant again submitted a representation dated 05.08.2016 seeking disability pension. When no response was received from the respondents, the applicant filed the present OA seeking the said relief.

4. On behalf of the applicant, learned counsel submitted that the applicant, at the time of joining the service, was declared medically and physically fully fit in medical category 'AYE' and no note was made in his medical record to the effect that the applicant was suffering from any disease at that time and any medical disability contracted by him during the course of his service should be treated as attributable to and aggravated by the stresses and strains of his service. Learned counsel further submitted about the

strictly regimented routine and challenging conditions of service which cause a lot of stress and strain not only mentally but also physically.

5. It is contended by the learned counsel that the applicant was posted at 30 Wing, AF Station, Sarsawa w.e.f. March, 1988 to 1993 and thus due to acute strain and stress of service, he developed ECG abnormality, which was diagnosed later as 'WPW Syndrome' and he was placed in low medical category CEE (T). It is further contended that the applicant suffered with the said disability time and again and was thus placed in medical category CEE (P) and later the applicant was thus discharged on 30.06.2003 in low medical category BEE (P).

6. Learned counsel further contended that that the applicant remained in medical category 'AYE' for about six years and because of the said disease, which occurred during service and due to which he was placed in low medical category BEE (P) at the time of discharge, the disability should be held attributable to service. Learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Ram Avtar**

**[Civil Appeal No. 418 of 2012] decided on 10.12.2014**, by which the applicant is entitled to disability pension with rounding off benefit @ 50%. Learned counsel, therefore, prays that the disability in question may be held as attributable to and aggravated by military service and that the disability pension be granted to the applicant.

7. *Per contra*, 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 is constitutional in nature and not connected with service, and the same has been assessed @ less than 20% (15-19%). and, therefore, the OA deserved to be dismissed. Learned counsel further submitted that in November, 1989, the applicant reported with complaints of palpitation and discomfort in chest and he had given history of similar attack of palpitation in the past also which was mostly self-limiting and he used to lie down and became alright, and also that the applicant has declared himself that he used to smoke 10-12 cigarettes daily. It is contended on behalf of the respondents that the

applicant, after he was diagnosed with the disease, was given immediate treatment. Therefore, it is prayed that the OA be dismissed.

8. We have heard the submissions of the learned counsel for the parties and have carefully perused the records of RMB.

9. It is undisputed that at the time of his release, the applicant was brought before the RMB and that his disability was opined to be 'neither attributable to nor aggravated by military service' being constitutional in nature hence not connected with service and was assessed at less than 20% (15-19%) for life. Needless to say that condition precedent for grant of disability element of pension is two-fold, i.e., the disability should be attributable to or aggravated by military service; and the assessment of disability should be 20% or more.

10. As per Regulations 153 of the Pension Regulations for the Air Force, 1961, a person who is retired from air force service on account of a disability which is attributable to or aggravated by such service and is assessed at 20% or more,

on retirement may be awarded disability pension. Hence, on a bare reading of the above Regulation, it is clear that a person who retires 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 service rendered in the Air Force.

11. Having heard both sides, the only issue that requires to be adjudicated is as to whether the applicant, whose disability i.e. ECG Abnormality (WPW Syndrome) is assessed by RMB at less than 20% (15-19%) and is held as 'neither attributable to nor aggravated by military service', is entitled to disability pension with rounding off benefit ?

12. With regard to the issue regarding entitlement of disability pension when the assessment of disability by the RMB is less than 20% i.e. @ 15-19% for life, we may refer to the judgment of the Hon'ble Supreme Court in **Union of India & Ors. Vs. Wing Commander S.P. Rathore [Civil Appeal No. 10870/2018] decided on 11.12.2019**, 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 an Air Force Officer who superannuated from service in the natural course and whose disability is less than 20%.**

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**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. In **Bachchan Prasad Vs. Union of India & Ors.**

**[Civil Appeal No. 2259 of 2012]** dated 04.09.2019, the

Hon'ble Supreme Court 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. In its judgement in the case of Secretary, Ministry of Defence & Others Vs. Damodaran A.V. (dead) through LRs. & Others [(2009) 9 SCC 140], Hon'ble Apex Court 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/invalidating 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."*

15. Further, it would be helpful to refer to the clinical review/article available in the open domain (*ref. NIH-National Library of Medicines updated on 07.08.2023 on internet*) with regard to the disability suffered by the applicant i.e. WPW Syndrome, which gives a detailed explanation of the disease.

The relevant portion of the same reads as under :

*"Wolff-Parkinson-White (WPW) syndrome is a congenital cardiac preexcitation syndrome that arises from abnormal cardiac electrical conduction through an accessory pathway that can result in symptomatic and life-threatening arrhythmias. The hallmark electrocardiographic (ECG) finding of WPW pattern or preexcitation consists of a short PR interval and prolonged QRS with an initial slurring upstroke ("delta" wave) in the presence of sinus rhythm. The term WPW syndrome is reserved for an*

**ECG pattern consistent with the above-described findings along with the coexistence of a tachyarrhythmia and clinical symptoms of tachycardia such as palpitations, episodic lightheadedness, presyncope, syncope, or even cardiac arrest.**

**The normal heart consists of two electrically insulated units, the atria and the ventricles. These units are connected by a conduction system that allows for normal cardiac synchrony and function. The cardiac electrical potential originates from the sinoatrial node of the right atrium and propagates through the atria to the atrioventricular (AV) node. The action potential is delayed in the AV node and is then quickly transmitted through the His-Purkinje system to the ventricular myocytes allowing for rapid ventricular depolarization and synchronized contraction. Patients with WPW syndrome have an accessory pathway that violates the electrical isolation of the atria and ventricles, which can allow electrical impulses to bypass the AV node. In some settings, this pathway can result in the transmission of abnormal electrical impulses leading to malignant tachyarrhythmias. The ECG findings of the WPW pattern are caused by the fusion of ventricular preexcitation through the accessory pathway and normal electrical conduction. Most patients with WPW pattern will never develop arrhythmia and will remain asymptomatic.....”**

From the above, it is clear that the disability of the applicant is a congenital abnormality that involves the presence of abnormal electrical conductive circuits between the atria and ventricles. Besides, during the time when the disability first occurred, the applicant was declared to be a smoker who used to smoke 10-12 cigarettes per day and it is a well-known fact that smoking alone can be a cause for heart ailments, hypertension, lungs disease etc. and thus the

disability of the applicant cannot be held to be attributable to or aggravated by service conditions.

16. In the light of the above considerations, we conclude that since the disability of the applicant does not meet the twin criteria of being assessed at 20% or more and of being attributable to or aggravated by military service, the applicant is not entitled to the disability element and consequently not entitled to disability pension. The OA is accordingly dismissed.

17. Pending MAs, if any, stand closed accordingly. No order as to costs.

Pronounced in open Court on this 9 day of August, 2024.

**[JUSTICE RAJENDRA MENON]  
CHAIRPERSON**

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

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