

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

OA 1742/2018

Ex POR (TEL) Naresh Kumar

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. JP Sharma, Advocate

For Respondents : Mr. Arvind Patel, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, 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) To quash and set aside the impugned letter dated 11.10.2018 as Annexure A-1 Impugned order;*
- (b) Direct respondents to treating his assessment as @ 20% as his disability viz " GRAVES DISEASE ICD 5.8" as Aggravated by Naval service due to stress and strain of service and grant Disability Element of Pension @ 20% and further rounding off of disability @ 20% to @ 50% wef 01.02.2016 to for life in terms of GoI, MoD letter no 1(2)/97/D(Pen-C) dated 31.01.2001 and law settled by Hon'ble Supreme Court in Case no. CA- 5605/2010 titled Sukhvinder Singh vs UOI (2014 STPL(eb) 468 SC) decided on*

25.06.2014, Hon'ble AFT Chandigarh in OA 1774/2014 order dated 07.05.2015 titled Kishori Lal vs Union of India and others & Civil Appeal NO 418/2012 titled UOI & Ors vs Ram Avtar vide order dated 10.12.2014 along with 10% interest till date of actual payment.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

BRIEF FACTS

2. The applicant was enrolled in the Indian Navy on 31.07.2000 and was discharged on 31.01.2016 on expiry of engagement period after rendering total 15 years 06 months and 01 days of regular service in low medical category S2A2(P)PMT. The Release Medical Board (RMB) dated 28.09.2015 found the applicant to be fit to be released in low medical category S2A2(P)PMT, for the disability of Grave's Disease ICD E-5.8 assessed @ 1-5% for life and the same was considered as not attributable to but aggravated by military service. However, the net qualifying percentage for the disability pension was assessed 'Nil' for life.

3. The claim for the grant of the disability pension of the applicant was rejected and was communicated to the applicant by the competent authority vide letter

No. NAVPEN/600/D/LRDO/I:01/2016/127219K dated 29.01.2016 and the applicant with an advice to prefer an appeal against rejection of his disability pension, within 06 months from the date of receipt of this letter. However, the applicant did not prefer any appeal and served a legal notice dated 30.04.2017 against rejection of disability pension and the same has been replied vide office letter No. LC/PEN/600/Legal Notice/127219 dated 21.06.2017. Aggrieved by this, the applicant has filed the instant O.A. and thus, in the interest of justice, we take up the same 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.

5. The learned counsel for the applicant also placed reliance on the verdicts of the Hon'ble Supreme Court in the case of CA-5605/2010 titled **Sukhvinder Singh vs UOI** STPL(web), 468 SC dated 25.06.2014, Civil Appeal No. 418/2012 titled as **UOI & Ors vs Ram Avtar** decided on 10.12.2014. The learned counsel of the applicant also placed reliance on the orders of the AFT, Principal Bench, New Delhi in OA No. 48/2011 titled **Ex Rect Chena Ram vs UOI & Ors.** dated 17.04.2013, wherein similarly situated personnel were given relief.

6. *Per contra*, the learned counsel for the respondents submitted that the sanction of disability pension in case of the disability at the time of discharge from service is based on fulfilment of essential conditions as laid down under Rule 105-B of Navy (Pension) Regulations, 1964 wherein the disability should be either attributable to or aggravated by the Naval service and the minimum assessment for disabilities mandatorily is required to be 20% or more. The applicant is not entitled to the grant of the disability pension.

ANALYSIS

7. We have heard the learned counsel for the parties and have also perused the record produced before us.

8. It is undisputed that the RMB has opined the said disability of the applicant @1-5% for life and held the same as not attributable to but aggravated by military service. Needless to say that condition precedent for grant of disability element of pension is two-fold:

(i) Disability should be attributable to or aggravated by military service.

(ii) The assessment of disability should be 20% or more.

hence, on a bare reading of the above Regulation 105-B of Navy (Pension) Regulations, 1964, it is clear that an officer retired 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 military service.

9. In the case in hand, since the RMB has assessed the disability of the applicant at 1-5% (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% (1-5%), 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.”

10. 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%.”

11. Thus, in view of the circumstances of the instant matter, the applicant's disability do not meet one of the twin criteria as per Regulation 105-B of Navy (Pension) Regulations, 1964, and thus we do not find any infirmity in the opinion of the RMB denying the disability element of

pension to the applicant for the said disability being not attributable but aggravated by military service and being assessed @1-5%, the applicant thus is not entitled to the grant of the disability element of pension.

CONCLUSION

12. In view of the aforesaid analysis and the parameters referred to above, there being no infirmity in the opinion of the RMB, the OA 1742/2018 stands dismissed being devoid of merits.

13. There is no order as to costs.

Pronounced in open Court on this ^M 6 day of December, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)