

**COURT No.1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**OA 1833/2019**

**Ex L COM (TEL) Devendra Singh Dishwar ... Applicant**  
**Versus**  
**Union of India and Ors. ... Respondents**

**For Applicant : Mr. Ved Prakash, Advocate**  
**For Respondents : Mr. K.K. Tyagi, Advocate**

**CORAM**

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

**ORDER**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant filed this OA praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by naval service and grant disability element of pension rounded off to 50% with effect from the date of retirement of the applicant; along with all consequential benefits.

2. The applicant was enrolled in the Indian Navy on 31.01.2004 and discharged on 31.01.2019 after serving for approximately 15 years of qualifying service. The Release Medical Board dated 14.09.2018 held that the applicant was fit to be discharged from service in composite low medical category S3A2(A) PMT for the disability - TRAUMATIC AMPUTATION

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DISTAL PHALANX (RT) INDEX FINGER OPTD @9% for life while the qualifying element for disability pension was recorded as 9% for life on account of disability being treated as attributable to naval service (NANA).

3. The claim of the applicant for grant of disability pension was adjudicated by the competent authority and rejected vide letter PEN/600/D/1st Appeal/139044K dated 20.10.2019 stating that the aforesaid disability was considered as less than 20%. Aggrieved by the aforesaid rejection, the applicant has approached this Tribunal.

4. Placing reliance on the judgement of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, Learned Counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Indian Navy at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by naval service.

5. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 101 of the Pension Regulations for the Navy, 1964, the primary condition for the

grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Naval service and is assessed @ 20% or more.

6. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disability was assessed at 9% which is less than 20% and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we are of the opinion that as far as disability is concerned, it is well below the 20%, thereby, not exceeding the benchmark. It is pertinent to note that if medical board is of the opinion that the disability does not warrant 20%, it would not be appropriate for us to critically examine the medical opinion, unless a strong defect or malafide intention has been brought on record.

8. The Supreme Court in its judgement in ***S.P. Rathore's case (Civil Appeal No. 10870/2018, decided on 11.12.2019)*** has held that that 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. The

relevant paragraphs of the aforesaid judgements are reproduced 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*

*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."*


9. Therefore, in view of our analysis, the OA is devoid of merits and therefore, the decision of competent authority warrants no interference.

10. Consequently, the O.A. 1833/2019 is dismissed.

11. No order as to costs.

Pronounced in the open Court on 18 day of March, 2024.

  
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(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

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