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

OA 419/2017 WITH MA 350/2017

Col Arun Mukherjee (Retd.) ... Applicant
Versus
Union of India &Ors. ... Respondents

For Applicant : Mr. Ved Prakash with
Mr. Devedra Kumar, Advocates
For Respondents : Mr. Arvind Kumar, Advocate

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

ORDER
13.02.2024

MA 350/2017

Keeping in view the averments made in the application and in the light of the decision in *Union of India and others Vs. Tarsem Singh* (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA stands disposed of.

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3. Invoking the jurisdiction of this Tribunal; under Section 14, the applicant has filed this application and the reliefs claimed in para 8 read as under:

> 1. *To set aside the orders of the Adjutant General issued vide their letter No. 12681/IC-35187/T-8/MPS (b) dated 8th February, 2017.*

2. *To direct the respondents to pay the applicant the disability pension @50% for life in view of Hon'ble Supreme Court Judgements in Sukhvinder Singh Vs Union of India & Ors. Civil Appeal No. 5605/2010 decided on 25th June 2014, Union of India vs Ram Avtar, Civil Appeal No. 418/2012 dated 10.12.2014 with effect from the 05th March 2005, date of his retirement being 5th March, 2005, in terms of Hon'ble Supreme Court order in Davinder Singh Vs Union of India & Ors. Civil Appeal No. 946/2016 dated 20th September, 2016.*
3. *To direct the respondents to pay the arrears of disability pension with 18% interst with effect from the next day of release of the applicant.*
4. *Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstance so the case along with cost of the application in favour of the applicant and against the respondents.*

4. The applicant was commissioned in the Indian Army on 10.06.1978 and discharged from service on 05.03.2005 on his own request at the time of his release from service. The applicant was brought before duly constituted RMB which held his disability of CROHN's disease @ 11-14% for life and aggravated due to stress and strain of service; primarily due to service in HAA and snow bound area.

5. Learned counsel for the applicant submits that other than a few postings in peace stations the applicant had been throughout posted to field/High Altitude stations where living conditions were very difficult

due to harsh and extreme climatic environment and the applicant had to often take tinned food due to non-availability of fresh food items in snow bound high altitude areas. After a long exposure to in congenial climatic conditions coupled with general stress and strains of service caused the applicant to suffer from CROHN's disease which when went aggravated compelled him to be hospitalized. Learned counsel further submits that the applicant was downgraded from Shape -I to S1H1A1P2 (T-8) E1 in November 1996 and he was permanently downgraded to S1H1A1 P2(P)E1 on 13th August, 1997and due to low medical category, the applicant decided to take premature retirement after putting in about 27 years.

6. The release medical Board of the applicant was held on 13th January, 2005 which while confirming the findings of previous medical boards opined in Part V of the RMB (opinion of the Medical Board) that the disability of CROHN's disease suffered by the applicant was contracted in service and was aggravated by stress and strain of the military service and the said disability was assessed to be 11 to 14% for life. The respondents have not disputed the facts of the case. It is the submission of learned counsel for the respondents that the applicant is

no entitled to CROHN disease as the disability has been held to be less than 20%.

7. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that as far as disability of the applicant is concerned, it is well below the 20%, thereby, not exceeding the benchmark and we may refer Rule 11 of GMO (Military Pensions), 2002 which reads as under:-

> *"In the forces, the evaluation of disablement or assessment, is made to ensure compensation on equal terms for all members suffering from like disablement. When the assessment is below twenty per cent, it may be assessed as 1-5 per cent; 6-10 per cent; 11-14 per cent and 15-19% per cent Subsequently assessments are made in multiples of 10, rising from 20 per cent; to maximum of 100 per cent".*

Thus, the fact that it is assessed less than 20%, it will be recorded in bracketed multiples of 5; and if it is assessed 20% and above, it will be designated in multiples of 10 and hence, 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. Hon'ble 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 judgement 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*
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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.*
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> *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.*
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> *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.*
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> *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, this OA is liable to be dismissed as devoid on merits. Consequently, the present OA 419/2017 is dismissed.

10. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Ps
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