

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

O.A. No. 200/2018

In the matter of :

Ex Hav Lekhraj Singh (Retd)	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of this 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) Quash and set aside the impugned letters dated 22 Aug 2017.*
- (b) Direct the respondents to grant disability pension @100% for life to the applicant with effect from 01 Dec 1992 i.e. the date of invaliding out from service with interest @ 12% p.a. till final payment is made.*
- (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 Army on 29.11.1968 and was discharged from service on 30.11.1992 (AN) on fulfilling the conditions of enrolment under Army Rule 13(3) Item III (i). He was granted service pension w.e.f. 01.12.1992 for life. Before discharge,

the applicant was placed before the Release Medical Board (RMB) on 06.04.1992, whereby his disability 'Chill Blains Both Feet and Hands' was considered as 'Attributable to military service' with an assessment of @30% for 2 years and the applicant was declared fit to be released in low medical category BEE (P) on account of the said disability. However, while the applicant was still in service, he developed 'Pulmonary Tuberculosis' on 07.06.1992. Thereafter, on two occasions before his discharge on 07.07.1992 and 14.11.1992, the applicant underwent Invalid Medical Board. Since on 07.07.1992, the said disability was assessed @100%, without mentioning any duration, the applicant reported for IMB again on 14.11.1992 for the said disability which was assessed as 'Disseminated Tuberculosis' and was held as 'Attributable to military service' with an assessment of @100% for 1 year. The Invalid Medical Board dated 14.11.1992 declared the applicant fit to be invalided out from service in low medical category 'EEE' on account of his disability 'Disseminated Tuberculosis'. However, the second Invalid Medical Board dated 14.11.1992 did not mention his disability 'Chill Blains Both Feet and Hands' and thus did not give composite assessment for his both disabilities.

4. Disability pension claim of the applicant for the disability 'Disseminated Tuberculosis' was forwarded to PCDA (P) Allahabad vide letter No. 13826261/ Pen/ Disb dated 03.12.1994. The PCDA (P) Allahabad vide letter No. G3/82/436/12/94 dated 05.04.1995, sought certain clarifications from the applicant regarding non-inclusion of details of his first RMB held on 06.04.1992.

5. The applicant neither produced his previous Release Medical Board documents to medical authorities nor the medical authority included his consolidated disability in the last Release Medical Board documents. Hence, the applicant's case for disability pension for disability 'Disseminated Tuberculosis' was not processed. The applicant also did not submit any representation for grant of disability pension on account of the said disease.
6. The Re-Survey Medical Boards for disability 'Chill Blains Both Feet and Hands' were held from time to time and the applicant was granted disability pension from 01.12.1992 to 26.03.2000 however, in the 3rd RSMB for the disability 'Chill Blains Both Feet and Hands' (i.e. for the period 27.03.2000-22.09.2004), the disability pension was stopped due to the assessment of his disability being assessed less than 20% by the RSMB. Finally in the 4th RSMB, the said disability of the applicant was assessed 15-19% for life and the disability pension was stopped by the CCDA (P) vide their letter dated 27.09.2002.
7. The applicant sent a Legal Notice dated 11.04.2017, through his counsel (Annexure A-4). The same was replied by ASC Records (South) vide Letter No. 13826261/LN/Legal Cell dated 28.04.2017 denying disability element of pension (Annexure R-3). The applicant submitted an undated petition which was replied by ASC Records (South) vide letter No. 13826261/Pre-96/DP-6 dated 22.08.2017, vide which he was informed that Government of India, MoD has prescribed a time limit of 5 years in the belated cases vide letter

No. 1(3)/2008/D(Pen/Pol) dated 17.05.2016, therefore ASC Records (South) is unable to process his case.

8. The applicant thereafter submitted an RTI Application dated 16.07.2017 to obtain copies of his Invaliding Medical Board proceedings. On receipt of RTI application, RMB documents of the applicant were traced out and provided to the applicant by the PIO, ASC Records (South) vide letter No. 13826261/RTI/Legal cell dated 31.08.2017. On being traced out RMB documents of the applicant, his case was thoroughly examined and found that while carrying out subsequent RMB as well as RSMB, his both disabilities were not taken into account compositely. Accordingly, his case was processed to Office of the DGAFMS by ASC Records (South) vide letter No. 13826261M/Pen/Disb/T-1 dated 01.03.2018 to obtain sanction of DGAFMS to carry out RAMB (Annexure R-4). Vide DGAFMS letter dated 25.04.2018, sanction was accorded for holding of RAMB for ID (ii) Disseminated Tuberculosis only (Annexure R-5). The RAMB was arranged at Base Hospital Delhi, however, the applicant did not report within the stipulated time for attending the RAMB and his medical documents were returned by the Hospital to ASC Records (South) vide Base Hospital Delhi letter dated 05.03.2020. Subsequently, RAMB on 28.03.2022, assessed his disability Disseminated Tuberculosis @ 10% for life, stating that "There is no evidence of relapse of Tuberculosis. Aggrieved by the response of the respondents, the applicant has filed the present OA on 10.01.2018. In the interest of

justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

8. Placing reliance on the judgment of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors* [2013 (7) SCC 36], the learned counsel for the applicant submitted that the applicant was enrolled in the Army on 29.11.1096, being hale and hearty having no note of any disability recorded in the service documents of the applicant at the time of the entry into the service, and that he served in the Army for 24 years and thus thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

8. The counsel for the applicant submitted that the applicant was invalided out from service on 30.11.1992 in low medical category EEE(P) and invaliding Medical Board assessed his disability 'Pulmonary Tuberculosis' @ 100% and recommended the same as attributable to military service. It is further submitted on behalf of the counsel for the applicant that the applicant also suffered with another disability i.e. Chill Blains both feet and hands and the same was considered as attributable to service and assessed @30% and was granted disability pension but stopped by PCDA Allahabad vide their letter dated 27.09.2002 administratively.

9. The learned counsel for the applicant placed reliance on various judgments of the Hon'ble Supreme Court including *Deokinandan Prasad Vs. State of Bihar* Air 1971 SC page 1409, *Dharamvir Singh Vs. UoI &*

Ors. Civil Appeal No. 4949 of 2013, 2013 AIR SCW 4236 and on *UoI & Ors. Vs. Rajbir* decided on 13.02.2015 and Civil Appeal No. 418/2012 titled as *Union of India Vs. Ram Avtar* on 10.12.2014, for grant of disability pension to the applicant.

10. The learned counsel further placed reliance on the decision of the AFT, Principal Bench, New Delhi in the case of TA No 208/2010 (W.P. (C) NO. 9764/2009) titled *Krishna Singh vs. UOI & Ors* decided on 01.10.2010, on OA No. 90/2014 as EX AC (U/T) Naresh Kumar Rana Vs. UoI & Ors. decided on 25.09.2014 and wherein similarly situated person was granted relief.

11. *Per Contra*, It is submitted by the counsel for the respondents that as per Para 173 of Pension Regulations for the Army, 1961, Part-1, the primary condition for grant of disability pension is unless otherwise specifically provided a disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service and is assessed @20% or over. Since, the Re-Survey Medical Board assessed the percentage of his disability @less than 20%, he is not eligible for grant of Disability Pension in terms of Para 173 of Pension Regulations for the Army, 1961, Part-1.

12. It is further submitted on behalf of the respondents that after a lapse of 26 years, the applicant sent a Legal Notice dated 11.04.2017, through his Counsel. It is further submitted on behalf of the respondents that the applicant has filed the instant OA after an

inordinate delay of more than 26 years without any justifiable reason for the delay and is hopelessly barred by limitation. The OA is thus liable to be dismissed on account of delay and laches and in terms of Para 173 of Pension Regulations for the Army, 1961, Part-1 as well.

ANALYSIS

13. We have heard learned counsel for the parties and perused the material placed on record. We have also gone through the Release Medical Board and Invalid Medical Board held separately for the disabilities 'Chill Blains both feet and Hands' and 'Disseminated Tuberculosis' and their subsequent Re-Assessment Medical Boards as well as the rejection orders of the disability pension claims. Now, the question for consideration is whether the applicant is entitled for the grant of disability pension for the period, wherein RSMB has assessed his disability at less than 20% for both the disabilities which is minimum benchmark for grant of disability as per Para 173 of the Pension Regulations for the Army, 1961 (Part-I).

14. On analysis of open medical literature on the ailment, we find that 'Disseminated Tuberculosis' the disability of the applicant is curable with time and regular medication. It is important to note that the RSMB has itself assessed the disability @10% for life, stating that "There is no evidence of relapse of Tuberculosis" which is a clear evidence that the disability has healed with time, and in absence of any contrary medical record, we find no reason to dispute the finding recorded by the Medical Board, and that the applicant is not entitled to disability pension for a disability which has been assessed at less than

20%. The other disability 'Chills Blains Both Feet and Hands', the applicant was already in receipt of the disability pension for the said disability for the period 01.12.1992 to 26.03.2000, on the basis of the RMB and RSMB held from time to time, and when in the third RSMB held on the disability was assessed at less than 20% which was communicated to the applicant vide letter No. G3/RA/11/99/14530/V dated 05.07.2000 and in the subsequent RSMB, this disability was assessed @ 15-19% for life and, therefore, the disability pension was stopped. The applicant was duly examined by the medical boards held from time to time and was under treatment and thus we do not find any infirmity in the opinion of the medical boards.

15. As per Para 173 of the Pension Regulations for the Army, 1961, (Part-1), "disability pension" consisting of service element, disability element may be granted to an individual who is invalided out of service on account of disability which has been attributable to or aggravated by military service in non battle casualty and is assessed at 20% or over. Hence, on a bare reading of the above Regulation, 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.

16. In the case in hand, since the RSMBs have assessed both the disabilities of the applicant @less than 20%, with regard to the issue relating to entitlement of disability pension when the assessment of a disability by the RMB/RSMB is less than 20%, 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."

17. 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%."

18. However, in view of the RMB of the applicant for the disability 'Disseminated Tuberculosis' dated 14.11.1992 assessing the said disability as attributable to military service @100% for 1 year, we are of the considered view that the applicant is entitled to the disability element of pension for a period of one year only w.e.f. 01.12.1992 for the disability of 'Disseminated Tuberculosis'.

19. Thus, in view of the circumstances of the instant matter, the applicant's disabilities do not meet the twin criteria as per Para 173 of the Pension Regulations for the Indian Army, 1961 (Part-1) and thus we do not find any infirmity in the opinion of the RSMB denying the disability element of pension to the applicant for the said disabilities of 'Disseminated Tuberculosis' and 'Chill Blains both hands and feet' being assessed @10% for life and @15-19% for life respectively by the

RSMBs, the applicant thus is not entitled to the grant of the disability element of pension.

CONCLUSION

20. In view of the aforesaid analysis and the judicial pronouncements and parameters referred to above, there being no infirmity in the opinion of the RSMB, the OA 200/2018 stands partially allowed to the extent that the applicant is entitled to the grant of disability element of pension for the period of 1 year from the date of his discharge for the disability of 'Disseminated Tuberculosis assessed @100% for one year only. All other claims of the applicant stand dismissed.

21. There is no order as to costs.

Pronounced in the open Court on this day 25 of April, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/nmk/