

ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 396 of 2016

In the matter of :

Ex Dfr Dalel Singh Bazard ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri V.S. Kadian, Advocate

For Respondents : Shri V. Pattabhi Ram, Advocate

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) Direct respondents to grant disability pension to the applicant @ 50% by rounding off/broad banding benefits in terms of Govt. Of India Min of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 and law settled by Hon'ble Supreme Court in Civil Appeal No. 418/2012 titled UOI & Ors. V. Ram Avtar Vide judgment dated 10.12.2014 and/or

(b) Direct the respondents to pay the due arrears of disability pension with interest @12% p.a. from the date of his discharge.

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

2. Succiently, the facts of the case are that the applicant was enrolled in the Indian Army on 11.02.1975 and was discharged from service on 28.02.1995 (AN) under the provisions of Army Rule 13(3) Item 111(iv) at his own request on compassionate grounds. He had rendered 20 years and 18 days of service in Army.
3. The Release Medical Board (RMB), held on 15.09.1994, diagnosed the applicant with 'STRESS FRACTURE TIBIA (LT) (UPPER 1/3 RA)', assessing his disability at 6-10% for two years and the condition was deemed attributable to military service.
4. After discharge, the applicant applied for claimed disability pension, which was rejected by the respondents on the ground that his disability has been less than 20%. Thereafter, the applicant served a legal notice dated 27.11.2015 upon the respondents for grant of disability pension which was replied by the respondents vide letter No.1055214M/LN/LC/NER on 11.12.2015.

5. Aggrieved by rejection of his claim for disability pension, the applicant has filed the present OA. In the interest of justice, in terms of Section 21(1) of AFT Act, 2007, we take up the same for consideration.

Contentions of the parties

6. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit medically and physically and no note was made in his medical record that he was suffering from any disease at that time. The learned counsel submitted that the applicant sustained injury on 27.04.1977 while participating in cross country run held at 72 Armd. Patiala. He was diagnosed as "STRESS FRACTURE TIBIA (LT) V3 RA UPPER" and his disability was held attributable to military service. The Release Medical Board assessed the disability of the applicant as attributable to military service and @ 6-10% for two years. The disability pension claim of the applicant was rejected by the respondents stating that the disability was assessed less than 20%, hence it was not granted.

7. In support of his claim, the applicant has placed reliance on the verdicts of the Hon'ble Supreme Court in

the case of **Sukhvinder Singh Vs Union of India**, 2014 (14) SCC 364 and Civil Appeal No.418/2012 titled **Union of India and Others Vs. Ram Avtar** dated 10.12.2014 along with various Orders passed by this Tribunal in OA No. 320/2015 titled **Ex Sep Jai Singh Vs. UoI**, OA No.349/2015 titled **Sqn Ldr Kshitej Kumar Vs. UoI**, and OA No.714/2015 titled as **Ex Sgt Madanpal Vs. UoI & Ors.**, wherein similarly situated personnel were given relief of disability pension.

8. Learned counsel for the applicant argued that the assessment of the Stress Fracture could not have been assessed less than 30% in accordance with paragraph 31(g) of GMO(MP) 2008.

9. Controverting the OA, the respondents have filed a detailed counter affidavit. It is stated that under the provisions of Para 173 of Pension Regulations for the Indian Army, 1961 (Part-1), "Disability Pension consisting of service element and disability element may be granted to an individual, who is invalided out of service on account of a disability, which is attributable to or aggravated by

military service in non battle casualty and is assessed at 20% or over". However, in the present case, the applicant's disability is assessed less than 20% i.e. (6-10%) by the Release Medical Board. As a result, he is not eligible for the disability element of pension.

10. The respondents also placed reliance upon the judgment of Hon'ble Supreme Court in Civil Appeal No.1837/2009, titled **Union of India & Another vs. Ex. RFN Ravinder Kumar**, wherein the Hon'ble Apex Court vide judgment dated 23.05.2012 had stated as under:-

"Opinion of the Medical Board should be given primacy in deciding cases of disability pension and the court should not grant such pension brushing aside the opinion of the Medical Authorities, record the specific finding to the effect that the disability was neither attributable to nor aggravated by military service, the court should not ignore such a finding for the reason that Medical Board is specialized authority composed of expert medical doctors and it is the final authority to give opinion regarding attributability and aggravation of the disability due to military service and the conditions of service resulting in disablement of the individual".

and, therefore, the OA deserves to be dismissed.

ANALYSIS

11. We have heard respective submissions of the learned counsel for the parties and have carefully perused the records. We find that as the disability suffered by the

applicant has been accepted as 'attributable to Military service' but assessed @ less than 20%, the issue which needs to be considered is as to whether the applicant is entitled to disability pension or not ?

12. In the case in hand, the RMB had assessed the disability of the applicant at 6-10% (less than 20%) for two years. With regard to the issue relating to entitlement of disability pension, when the assessment of a disability by the RMB is less than 20% (6-10%), 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 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."

13. 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%."

14. Insofar as the argument with respect to assessment of Stress Fracture not being less than 30% is concerned, it is brought out that the assessment of para 31(g) of GMO (M) 2008 reads as under:-

"31(g)Osteomyelitis as complication to comminuted fracture or systemic-infection-

| | |
|--|-----|
| Weight bearing bone | 30% |
| Non-weight bearing bone | 20% |
| Osteomyelitis associated with pathological fracture" | 40% |

From the above, it is clear that Stress Fracture is not covered by the above provision and it is only 'Osteomyelitis as complication to comminuted fracture or systemic

infection whereby the assessment of atleast 30% can be granted when the weight bearing bone are affected.

15. A bare reading of Para 173 of the Pension Regulations for the Army, 1961, (Part-1), referred to hereinabove, it is clear that an officer, retired from service, is entitled to disability pension only if disability is assessed at 20%. Para 173 of the said Regulation reads as under:-

"173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over.

16. In light of the above considerations, we conclude that since the disability of the applicant does not meet one of the twin criteria as per Regulation 173 of the Pension Regulations for the Air Force, 1961 (Part-I) for being eligible for getting disability element of pension as the RMB assessed the disability of the applicant at less than 20% (6-10%), he is not entitled to the disability pension.

CONCLUSION

17. In view of the aforesaid analysis and the parameters referred to above, there being no infirmity in the opinion of the RMB, OA 396/2016 stands dismissed being devoid of merit.

18. There is no order as to costs.

Pronounced in open Court on this 4th day of April,
2025.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

/vb/