

(20) 06 AFT CK 0024

Armed Forces Tribunal Principal Bench, New Delhi

Case No: Original Application No. 602 Of 2018, Miscellaneous Application No. 493 Of 2018

Prem Vallabh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision: June 17, 0020

Hon'ble Judges: Sunita Gupta, J; B.B.P. Sinha, Member (A)

Bench: Division Bench

Advocate: V.S. Kadian, Arvind Patel

Final Decision: Dismissed

Judgement

M.A. 493 OF 2018

1. For the reasons carved out in the application, the delay of 8942 days in filing of Original Application is condoned. MA stands disposed of.

O.A. 602 OF 2018

The applicant, Ex. Rfn. Prem Vallabh, through the medium of the instant Original Application is seeking the following reliefs:

(a) Quash and set aside the impugned letter No. 4069185/DP dated 28.04.2017. And/or

(b) Direct the respondents to grant him disability element of pension with the benefit of broad banding/rounding off.

(c) Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of 10.09.1993 with all the consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 24.01.1986 and was invalided out from service on

31.10.1990 in Low Medical Category. At the time of retirement from service, the Release Medical Board (RMB) held at Military Hospital, Meerut on

10.09.1990 assessed his disability 'TEND SYNOVITIS (RT) INDEX FINGER (OPTD) V67' @30% for three years and opined the disability to be

attributable to military service. Accordingly, the Chief Controller of Defence Account (Pensions), Allahabad has granted disability pension from

01.11.1990 to 09.09.1993 vide PPO No. D/010140/91. His Re-Survey Medical Board (RSMB) was held at Base Hospital Delhi Gantt. on 14.05.1994

and his disability was assessed @14% (less than 20%) for ten years w.e.f. 10.05.1994. Accordingly, the disability pension has been discontinued by

the CDA (Pensions), Allahabad. The applicant's Re-assessment Medical Board was held at Base hospital Delhi on 08.08.2002 and his disability was

assessed @11-14% (less than 20%) for life. The initial claim of the applicant was rejected by the CDA (Pensions), Allahabad vide their letter dated

01.01.2003. The applicant sent legal notice cum representation dated 29.03.2017 which replied by the respondents vide their letter dated 28.04.2017.

The applicant has sought information under Right to Information Act, 2005 which was replied by the respondents vide their letter dated 30.11.2017. It

is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army

and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant

was contracted during the service and is opined by the RMB that it is attributable to Military Service. He pleaded that various Benches of Armed

Forces Tribunal have granted disability pension in similar cases, as such the applicant's disability be declared more than 20% and it should be rounded

off to 50% and he be granted disability element as well as arrears thereof from the date of his discharge.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @30% for three years has been regarded as

attributable to military service by the RMB. Accordingly, disability pension was granted to the applicant. Thereafter, RSMB held on 14.05.1994 and

assessed his disability @14% for ten years and the last RSMB held on 08.08.2002 has assessed his disability @11-14% for life. Since the disability

of the applicant is less than 20%, hence applicant is not entitled to disability element. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board

proceeding, Re-Survey Medical Board proceedings as well as the records. The only question which needs to be answered is straight and simple i.e.

whether the question of rounding off would apply where the disability of the applicant is less than 20%?

6. This is a case of invalidment by IMB in the year 1990. Since the disability of the applicant was considered as attributable he was granted disability

pension consisting of both service element and disability element. The applicant is already in receipt of service element for life and he has no complaint

on that issue. The applicant is primarily aggrieved by the reduction of his disability element whereby his disability percentage has been reduced below

20% i.e. @11-14% by his last RSMB, thereby making him ineligible for disability element. We have noted that his last RSMB held in 2002 is for life.

We have also noted the Specialist Medical Officer remark that his 'Operation Scar, is well healed and his Grip is good'. Thus implying that due to

healing with time the disability percentage has dropped. On this matter, the Hon'ble Supreme Court in the case of Union of India Vs. Wing

Commander S.P. Rathore, Civil Appeal No. 10870 of 2018, decided on 11.12.2019, has held as under :-

8." This Court in Ram Avtar (supra), while approving the judgment of the Armed Forces Tribunal only held that the principal 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 Regulations 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 house. It applied the principles of rounding off without

determining whether the petitioner/ applicant before it ""would entitled to disability pension at all

7. In view above, with reduction of disability percentage below 20%, the applicant is not entitled to disability element. Therefore, the question of

rounding off would not apply on the disability of the applicant i.e. 'TENO SYNOVITIS (RT) INDEX FINGER (OPTD) V67' (@11-14%) which is

less than 20%. As such the""8. This Court in Ram Avtar (supra), while approving the judgment of the Armed Forces Tribunal only held that the

principal 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. applicant is not entitled for the benefit of

disability element. He is already in receipt of service element of disability pension for life.

8. In view of the above, the O.A. is liable to be dismissed. It is accordingly dismissed.

9. No order as to costs.

10. Pending application(s), if any, also stand disposed of. Pronounced in the open court on I i kw*, 2020.