

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

15.

OA 1318/2019

Col MNR Pawar (Retd.) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
02.11.2023

The rejoinder of the applicant in terms of proceedings dated 16.10.2023 has been brought on record.

2. The applicant vide the present OA makes the following prayers:-

“(a) To direct the respondents to grant disability pension @ 20% to the applicant by treating the disability as attributable by the Military service.

(b) To direct the respondents to grant benefit of rounding of disability of the applicant @50% in terms of law settled by Hon'ble Supreme Court in UoI & Ors. vs. Ram Avtar dated 10.12.2014.

(c) To direct the respondents to pay the due arrears of disability pension with interest @10% p.a. wef date of retirement with all the consequential benefits.

(d) Set aside the impugned Orders and Call the RMB proceedings and quash the provision whereby the adjudication authority considered the disease as not attributable and affirm the decision of RMB.

(e) To pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.”

3. The applicant as per the Release Medical Board has been suffering from a disability of Impaired Glucose Tolerance (IGT) assessed with a percentage of disablement of 15 to 19% for life. The avowed contention raised on behalf of the applicant is to the effect that in terms of the verdict of the Hon'ble Supreme Court in ***Sukhvinder Singh Vs. Union Of India & Ors***, dated 25.06.2014 reported in 2014 STPL (Web) 468 SC (2013 7 SCC 316), with specific reliance on para 9 thereof to the effect:-

“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.”

(emphasis supplied)

with it having been submitted also that vide several orders of this Tribunal inter alia in OA 320 / 2019 titled as ***Sgt Rohitash Kumar Sharma (Retd) vs UOI*** of the AFT Regional Bench, Lucknow in which case where the percentage of disablement has been assessed by the

medical authorities at a marginal assessment of disablement of 15-19% i.e. less than the minimum requirement of 20%, the disability element of pension in such cases has been granted in terms of the verdict of the Hon'ble Supreme Court in *Sukhvinder Singh* (supra).

4. Reliance on the other hand, on behalf of the respondents has been placed on the verdict of the Hon'ble Supreme Court in *UOI & Ors vs Wing Commander S.P. Rathore* (Civil Appeal 10870/2018 dated 11.12.2019), wherein it has been observed vide para 8 & 9 thereof to the effect:-

“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. “

to thus submit to the effect that in as much as the disability in the instant case has been assessed with a percentage of disablement at less than 20%, the prayer made by the applicant cannot be granted.

5. It is essential to observe that in similar circumstances vide order dated 30.07.2019 in OA 449 of 2016, the Hon'ble AFT Regional Bench, Jaipur, in a case where the applicant thereof suffered from a disability of CEE (P) SPRAIN L knee in which the disability was assessed at 11- 14% for life in terms of the verdict of the Hon'ble Supreme Court in

Sukhvinder Singh (Supra), that applicant was held entitled to the arrears of disability pension at 50% with effect from the date when the right accrued to him.

6. Vide order dated 09.03.2021 in RA 6/2021 with MA 94/2021 in the said OA 44 of 2016, the application filed by the Union of India seeking review of the order dated 30.07.2019 was declined. It is essential to observe that vide order dated 28.04.2023 in Civil appeal Diary number 7836 of 2023 against the said orders dated 30.07.2019 in OA 449 of 2016 and 09.03.2021 in RA 6 of 2021 of the AFT Regional Bench, Jaipur, the Hon'ble Supreme Court has stayed the operation of the order dated 30.07.2019 and 09.03.2021 in OA 449 of 2016 and in RA 6 of 2021.

7. In these circumstances, in the interest of justice, we consider it appropriate that the proceedings of the present matter are kept in abeyance till disposal of Civil Appeal Dy number 7836 of 2023 by the Hon'ble Supreme Court, and the Registry is directed to re-list the matter after disposal of Civil Appeal Dy number 7836 of 2023 by the Hon'ble Supreme Court.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)