(2020) 07 AFT CK 0005

In the Armed Forces Tribunal

Case No : Original Application No. 1189 Of 2016

Om Parkash Mishra APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 07-07-2020

Acts Referred:

Pension Regulations For The Army, 1961 — Regulation 37(a), 37(b)

Citation : (2020) 07 AFT CK 0005

Hon'ble Judges : Sunita Gupta, J;Philip Campose, Member (A)

Bench : Division Bench

Advocate : V.S.Kadian, V.S.Mahndiyan

Final Decision : Dismissed

Judgement

1. The applicant, Ex JWO Om Prakash Mishra, through the medium of the instant Original Application, is seeking the following reliefs :

(a) Quash and set aside the impugned ORDER No. Air HQ/99798/1/750718/DAV/DP/CC dated 09.09.2016.

(b) Direct respondents to pay disability pension @ 500/0for life after rounding off/broad banding in terms of Govt. of India, Ministry 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

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

consequential benefits.

(d) Any other relief which the Honble Tribunal may deem fit and proper in the facts 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 Indian Air Force on 12.01.1993 and was retired from service on 31.01.2016.

That during service, on 10.07.1997, while supporting the MMZ vehicle jack, it fell down and crushed his middle finger of left hand. The same was

diagnosed as COMPOUND COMMUNITED FRACTURE (LT) MIDDLE FINGER PROXIMAL PHALANX and remained under treatment from

10.07.1997 to 22.09.1997. Before his retirement, the applicant was produced before the duly constituted Release Medical Board, which held the

disability of the applicant i.e. COMPOUND COMMUNITED FRACTURE (LT) MIDDLE FINGER PROXIMAL PHALANX as 'attributable to

military service' and assessed the same @ 7%. The claim of the applicant for grant of disability pension was rejected by the respondents on the

ground that although the disability was considered as attributable to military service, but the same was assessed @ 7% i.e. less than 20% and thus he

is not entitled to the disability pension.

3. Learned counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for joining the Indian Air

Force and there is no document that he was suffering from any disease at that time.

4. In their counter affidavit, the respondents have not disputed the facts of the case. It is submitted that vide AFMSF-15 dated 22.09.1997, the

applicant was recommended to be low medical category CEE (T-6/12) for his disability Compound Communuted Fracture Proximal Phalanx (LT)

Middle Finger (optd). During periodical review, the applicant was recommended low medical category GEE on 03.09.1998. On subsequent review, the

applicant was upgraded to low medical category BEE(P) vide AFMSF-15 dated 06.10.1999. The applicant's case was periodically reviewed and he

continued to be in low medical category A4G2(P). The Release Medical Board held on 09.04.2015 found the applicant fit to be released in low

medical category A4G3(P) for the aforesaid disability. The Release Medical Board considered the disability 'Compound Communuted Fracture

Proximal Phalanx (LT) Middle Finger (optd).' as 'aggravated by military service', however, the same was assessed @7% for lifelong. The

respondents further contended that as per Rule 153 of the Pension Regulations for Indian Air Force, 1961 (Part-I), the primary conditions for the grant

of disability pension are ""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 Air Force service and is assessed @ 20% or over."" However, in the present case, the

applicant's disability was assessed @ 7% only for life and the applicant was discharged from service after completion of terms of engagement, hence,

he is not entitled to disability pension.

5. We have given our considerable thoughts to the respective submissions of the learned counsel for the parties and have carefully perused the

records of RMB.

6. It is undisputed case of the parties that at the time of his discharge, the applicant was brought before the RMB and that his disability was opined to

be 'aggravated by military service' but was assessed @ 7%. Needless to say that condition precedent for grant of disability element of pension is two-

fold:

(i) Disability should be attributable to or aggravated by military service;

(ii) The assessment of disability should be 20% or more.

7. A perusal of the record shows that the applicant was fully fit when he was enrolled in the Indian Air Force. It is an admitted position that the

disability suffered by the applicant has been opined to be 'aggravated by military service' by the RMB.

8. As per Regulations 37(a) and (b) of Pension Regulations for the Air Force, 1961, an officer who is retired from air forces service on account of a

disability which is attributable to or aggravated by such service and is assessed at 20% or over, on retirement may be awarded disability pension.

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 service rendered in the Air Force.

9. As it is admitted that the disability was aggravated by military service, the only issue remains to be decided as to whether the applicant is entitled to

disability pension having disability @ 7% (less than 20%).

10. With regard to the issue relating to entitlement of disability pension when the

assessment of disability by the RMB is less than 20% i.e. @ 7% for

life, we may refer to the latest judgment dated 11.12.2019 of the Honiple Supreme Court in Civil Appeal No. 10870 of 2018 - Union of India & Ors.

Vs. Wing Commander S.P. Rathore, wherein a reference was made to Regulation 37(a) and (b) of the Pension Regulations for the Air Force, 1961,

as under:

2. We may make reference to the Defence Service Regulations Pension Regulations for the Air Force, 1961. Regulations 37(a) and (b)

under the heading ""Disability Pension when admissible"" read as follows:

37(a) An officer who is retired from air force service on account of a disability which is attributable to or aggravated by such service and is

assessed at 20 percent or over may, on retirement be awarded disability pension consisting of a service element and a disability element in

accordance with the regulations in this section.

(b) The question whether a disability is attributable to or aggravated by air force service shall be determined under the regulations in

Appendix II.

3. A bare reading of the aforesaid provision makes it clear that an officer of the Air Force who retires on attaining the age of

superannuation is entitled to disability pension only if disability is assessed at 20% or above. Furthermore, this disability must be attributable

or aggravated by service rendered in the Air Force.

11. In that case also, the disability of the Air Force officer was opined as aggravated by service but the same was assessed at less than 20%. Hon'ble

Apex Court setting aside the order of AFT granting disability pension along with rounding off, held that the officer who retires on attaining the age of

superannuation/discharge is entitled to disability pension only if the disability is assessed at 20% or above.

12. In view of the preceding paragraphs and essential parameters given aforesaid, we find that there is no merit in the present OA and the same is

accordingly dismissed. There shall be no order as to costs.

Pronounced in open court on this 1 day of July, 2020.

