(2020) 03 AFT CK 0054

In the Armed Forces Tribunal

Case No : Original Application No. 1360 Of 2017

Pradeepta Kumar Naik APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 11-03-2020

Acts Referred:

Citation : (2020) 03 AFT CK 0054

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

Bench : Division Bench

Advocate : G.K. Pathak, Prabodh Kumar

Final Decision : Dismissed

Judgement

1. The applicant, Pradeepta Kumar Naik, through the medium of the instant Original Application is seeking the following reliefs:

(a) To direct the respondents to grant the applicant with the disability pension declaring more than 20% and giving benefit of broad banding to 50%

from the date of discharge i.e. 01.04.2011.

(b) To direct the respondents to pay arrears from the date of discharge i.e. 01.04.2011 along with interest Â©12% per annum till its payment to the

applicant, or in the alternative direct the respondents to reassess the disability of the applicant by holding a duly constituted medical board within a time

frame as deemed appropriate by this Hon'ble Court.

(c) Pass any other or such further order or orders as deemed fit to this Hon'ble Tribunal in order to secure the ends of justice in favour of the

applicant.

Â 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 Air

Force and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Air force. 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 @15-19% for life has been regarded as attributable to

military service by the RMB but since it 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

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. We have noted that medical literature describes this disease i.e. 'TUBERCULAR LYMPHADENITIS' as a ""Chronic granulomatous inflammation

of the lymph node with caseation necrosis, caused by infection with Mycobacterium tuberculosis or related Bacteria"", We have also noted that it is a

curable disease and normally it can be cured within 6 â?" 12 months of treatment, We have also noted that the applicant has been upgraded from

medical category A4G4 (T24) to A-4G2 (P) after completion of his treatment. It is in this background that RMB has opined his disability to be

attributable but Â©15-19%. It is a case where though the RNIB has held the disease attributable, however, it has opined the disability to be less than

20% i.e. 15-19%, hence, the applicant is not entitled for the disability element. On this matter, the Hontle 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 72 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 horse. 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, the question of rounding off would not apply on the disability of the applicant i.e. 'TUBERCULAR LYMPHADENITIS (OLD) A

11.8.21 Z 09.0' (Â©15-19%) which is less than 20%. As such the applicant is not entitled for the benefit of disability pension.

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 11th March, 2020.

