

Neutral Citation No. - 2024:AHC-LKO:77228-DB

Court No. - 1

Case :- WRIT - A No. - 6368 of 2024

Petitioner :- Service No. 14625458-H Ex Nk Ram Dayal Kushwaha

Respondent :- Armed Forces Tribunal Trgional Bench Lko Thru. Its Registrar And 4 Others

Counsel for Petitioner :- Syed Mohd Mustafa, Ved Prakash Pandey

Counsel for Respondent :- A.S.G.I.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Manish Kumar, J.

1. Heard learned counsel for the petitioner and Sri Varun Pandey learned counsel who has put in appearance on behalf of the Union of India.

2. The following order was passed by this Court on 4.10.2024 :-

“1. Heard learned counsel for the petitioner and Sri S.B. Pandey, learned Senior Counsel and Deputy Solicitor General of Indian assisted by Sri Raj Kumar Singh and Sri Varun Pandey, learned counsel for the Union of India.

2. Major Sri Bharat Keshav of Indian Army is present in response to our earlier order. He says that requisite narratives and documents have to come from Sikandrabad, therefore, some more time has been sought for filing required counter affidavit.

3. Three weeks further and no more time is granted to the opposite parties to file aforesaid counter affidavit.

4. List/ put up on 05.11.2024 as fresh.

5. The Officer who is present need not appear again unless called for.”

3. Today when the case was called out, it appears that necessary compliance of the aforesaid directions has not been made despite last opportunity.

4. Be that as it may, on a careful reading of the judgment impugned herein this writ petition, we gather that the petitioner had assailed the order dated 17.2.2017 before the Armed Forces Tribunal, Regional Bench, Lucknow praying for the following reliefs:-

“(a) To set aside/quash the rejection order dated 17.2.2017 contained as Annexure A-1.

(b) To pass an order/direction to respondents for summoning of Release Medical Board Proceeding as to ascertain the percentage of disability (b) NON-UNION INTER CONDILAR FRACTURE (RT) FEMUR (OPD) (s-72.4).

(c) To issue order/direction to the respondents to grant disability element of disability pension for life from the next date of discharge i.e. 01 March 2020.

(d) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.

(e) Cost of the Original Application be awarded to the applicant.”

5. The petitioner in the Original Application filed before the Armed Forces Tribunal (hereinafter referred to as the Tribunal) had specifically pleaded in paragraphs 4.14 to 4.16 as under:-

*“4.14 That the Armed Forces Tribunal(Lucknow Bench) has decided the similar case wherein the assessment was less than 20 percent(15-19%). The photocopy of the judgment and order (TA 92 of 2011) of Hon’ble Armed Forces Tribunal(Lucknow Bench) being annexed as an **Annexure No. A-10** with this original application.*

4.15. That this Hon’ble tribunal has decided the similar matter in Original Application No. 320 of 2019 in the case of Sgt. Rohitash Kumar Sharma (Retd.) versus Union of India and others. The photocopy of judgment and order of the Armed Forces Tribunal (Regional

Bench, Lucknow) is being annexed as an Annexure No. A-11 to this original application.

4.16 That the applicant approaches this Hon'ble Tribunal for grant of disability element of disability pension and this Armed Forces Tribunal may be pleased to grant the same under the aforesaid submission as disability (a) RHEUMATOID ARTHRITIS (M-06.9) is aggravated by military service and disability (b) NON-UNION INTER CONDILAR FRACTURE (RT) FEMUR (OPD) (S-72.4) has occurred during casual leave."

6. Learned Tribunal while proceeding to decide the Original Application framed as many as three issues which for ready reference are extracted hereunder :-

“(a) Whether the first disability is below 20% or will be assessed as 20% or above and whether applicant was invalidated out of service on account of the disability or was discharged on completion of terms of engagement?

(b) Whether the applicant's second disability is attributable to or aggravated by military service?

(c) Whether the applicant is entitled for the grant of disability element of disability pension?”

7. The disability sustained by the petitioner while in military service as per the Release Medical Board was assessed on two counts. The disability on account of RHEUMATOID ARTHRITIS (M06.9)' was assessed at 15-19% for life, whereas disability of NON-UNION INTER CONDILAR FRACTURE (RT) FEMUR (OPTD) (S-72.4)' was assessed at 30% for life. Insofar as the second injury is concerned, it is not in dispute that the same had any causal connection with the military service and the petitioner has also not questioned the causal connection and claimed injury attributable to or aggravated by the military service. The contention putforth by the

petitioner was on account of the first injury which was assessed at 15-19% of which the causal connection with the military service though not denied, yet the claim was rejected as it did not satisfy the standard of 20% for life.

8. Learned counsel for the petitioner has argued that the Tribunal while deciding the Original Application has clearly omitted and ignored the real issue emanating from the first injury of which the causal connection with the military service was not in dispute at all.

9. According to learned counsel for the petitioner, the assessment of disability assessed at 15-19% was liable to be rounded off in view of the judgment passed by the tribunal in Original Application No. 320 of 2019 on 8.1.2021 and T. A. No. 92 of 2011 on 3.5.2012 and to which there is no mention in the impugned judgment rendered by the Tribunal. On account of this omission, learned counsel for the petitioner has argued that the learned tribunal while deciding the case fell in error on a substantial issue which somehow has escaped from its attention, whereas, the same ought to have been considered and adjudicated upon.

10. Sri Varun Pandey, learned counsel for the Union of India has argued that though the judgments which were referred to in the Original Application have not been considered by the tribunal but the medical guidelines as applicable to the issue at hand do not support the contentions putforth by the petitioner.

11. Since no such guidelines have not been placed before us, therefore, we do not approve of the approach adopted by the learned tribunal. We may observe that the tribunal has wrongly sidelined the pleadings set out by the petitioner and failed to consider the implication of its own judgment(s) rendered in identical matters for giving equal benefit to the petitioner.

12. The issues framed by the tribunal do not touch upon the real question as to whether the first injury sustained by the petitioner which was quantified at 15-19% for life entitles the petitioner of the benefit of the judgment(s) or not. Such a question though necessary was not decided by the tribunal and we find force in the arguments put-forth before us.

13. Once pleadings on the strength of two judgments rendered by the tribunal were set out, the tribunal was under a bounden duty to consider such a vital aspect of the matter and decide the Original Application as per law.

14. For the aforesaid reasons, the Court is of the opinion that a manifest error has crept in for not applying the principle of rounding off while deciding the Original Application. The principle of rounding off on the first injury was liable to be determined having regard to the earlier judgments of which the finality was not disputed by Union of India.

15. Accordingly, we **allow** the writ petition and set aside the impugned judgment rendered by the Tribunal in Original Application No. 957 of 2023 and remit the matter back to the tribunal for considering the aforesaid issue in the light of the judgments already rendered and the guidelines applicable in this behalf.

16. The tribunal shall conclude this exercise expeditiously and preferably not later than a period of four months from the date of filing of the judgment before the tribunal. The original application shall stand restored and may be decided afresh on its own merit.

[Manish Kumar, J.] [Attau Rahman Masoodi, J.]

Order Date :- 22.11.2024
kanhaiya