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UNION OF INDIA & ORS.

v.

WING COMMANDER S.P. RATHORE

(Civil Appeal No. 10870 of 2018)

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DECEMBER 11, 2019

[DEEPAK GUPTA AND SANJIV KHANNA, JJ.]

Armed Forces – Air Force – Disability pension – Entitlement – Disability pension consisting of a service element and a disability element – Appellant, an Air Force Officer, was superannuated from service – His disability was less than 20% – Whether appellant not having 20% disability was at all entitled to disability pension – Held: Both Regulation 37(a) of the Pension Regulations and Para 8.2 of Circular dated 31.01.2001 issued by Ministry of Defence clearly provided that disability element was not admissible if the disability was less than 20% – In view of the provisions, appellant was not entitled to disability pension – Consequently, there was no question of rounding off (of his disability) by applying the provisions of Para 7.2 of the Circular, as done by the Armed Forces Tribunal (AFT) – AFT erred in applying the principles of rounding off (of disability) without determining whether appellant was entitled to disability pension at all – When appellant is not entitled to disability pension, there would be no question of rounding off (of his disability) by application of the provisions of Para 7.2 – Defence Service Regulations – Pension Regulations for the Air Force, 1961 – rr.37(a), (b) – Circular dated 31.01.2001 issued by Ministry of Defence – Para 7.2 and 8.2.

Allowing the appeal, the Court

HELD: 1. A bare reading of rr.37(a), (b) of the Pension Regulations for the Air Force, 1961 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. [Para 3] [992-E]

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2. Para 7.2 of Circular dated 31.01.2001 issued by the Ministry of Defence which deals with officials of Armed Forces invalided out under circumstances mentioned in Para 4.1 provides that they would be entitled to rounding of the disability. Therefore, if the disability was less than 50%, it would be rounded off to 50%. If the disability was between 50 and 75% it would be rounded off to 75%. If the disability was between 76 and 100% it would be rounded off to 100%. Para 8.2 of the said circular falls under the heading of Disability Element on Disability/Discharge and provides that the provisions contained in Para 7.2 shall not be applicable for computing disability element in cases where the disability was less than 20%. 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. [Paras 6, 9][993-D-F; 994-B]

3. The Armed Forces Tribunal ('AFT') put the cart before the horse. It applied the principles of rounding off without determining whether the petitioner/applicant before it would be entitled to disability pension at all. In view of the provisions, the original petitioner/applicant before the AFT is not entitled to disability pension. Therefore, the question of applying the provisions of Para 7.2 would not arise in his case. In this view of the matter, the order of the AFT is set aside. [Paras 10, 11] [994-C-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10870 of 2018.

From the Judgment and Order dated 15.03.2018 of the Armed Forces Tribunal, Regional Bench, Lucknow in O.A. No. 477 of 2017 and order dated 12th July, 2018 in M.A. No. 1306 & 1307/2018 in OA No. 477/2017.

Ms. V.Mohana, R. Balasubramanian, Sr. Advs., Pranay Ranjan, Santosh Kr. Vishwakarma, Arvind Kumar Sharma, Advs. for the Appellants.

Mohan Kumar, Ms. Rashmi Singh, Ms. Ritu Bhardwaj, Ms. Neetu Singh, Ramesh Chandra, Advs. for the Respondent.

A The Judgment of the Court was delivered by

DEEPAK GUPTA, J.

B 1. The short question involved in this appeal filed by the Union of India is whether disability pension is at all payable in case of a Air Force Officer who superannuated from service in the natural course and whose disability is less than 20%.

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 :

C “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.

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

E 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.

F 4. So far as the second part is concerned, we are not going into that issue since in this case, it is admitted that the disability was aggravated due to service rendered in the Air Force. The only issue is whether the Appellant not having 20% disability is at all entitled to disability pension.

G 5. Both learned senior counsel appearing for the Union of India and learned counsel appearing for the Respondent rely upon Paras 7.2 and 8.2 of Circular dated 31.1.2001 issued by Ministry of Defence which read as follows :

“7.2 Where an Armed Forced personnel is invalided out under circumstances mentioned in Para 4.1 above, the extent of disability or functional incapacity shall be determined in the following manner for the purposes of computing the disability element:-

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<i>Percentage of disability as assessed by invaliding medical board</i>	<i>Percentage to be reckoned for computing of disability element</i>
Less than 50	50
Between 50 and 75	75
Between 76 and 100	100

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“8.2 For disabilities less than 100% but not less than 20% the above rates shall be proportionately reduced. No disability element shall be payable for disabilities less than 20%. Provisions contained in Para 7.2 above shall not be applicable for computing disability element. Disability actually assessed by the duly approved Release Medical Board/Invaliding Medical Board as accepted by the Pension Sanctioning Authority, shall reckon for computing disability element.”

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6. Para 8.2 falls under the heading of Disability Element on Disability/Discharge. A bare reading of Para 8.2 shows that where the disability is more than 20% but less than 80%, the rates prescribed earlier would be proportionately reduced. Again, it is made clear that no disability element shall be payable for disabilities less than 20%. Para 8.2 also provides that the provisions contained in Para 7.2 shall not be applicable for computing disability element in such cases. Para 7.2 which deals with officials of Armed Forces invalided out under circumstances mentioned in Para 4.1 would be entitled to rounding of the disability. Therefore, if the disability was less than 50%, it would be rounded off to 50%. If the disability was between 50 and 75% it would be rounded off to 75%. If the disability was between 76 and 100% it would be rounded off to 100%.

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7. Reliance has been placed by the learned counsel for the Respondent on the Order dated 10.12.2014 of this Court in “Union of India and Ors. Versus Ram Avtar” (Civil Appeal No.418 of 2012 etc.) and subsequent letter dated 18.4.2016 sent by the Ministry of Defence to the Chief of all the Armed Forces.

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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

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- A 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

- B 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 be entitled to

- C disability pension at all.

11. In view of the provisions referred to above, we are clearly of the view that the original petitioner/applicant before the AFT is not entitled to disability pension. Therefore, the question of applying the provisions of Para 7.2 would not arise in his case. In this view of the matter, we set aside the order of the AFT and consequently, the original application filed by the Respondent before the AFT shall stand dismissed.

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The appeal is allowed accordingly.