

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

97.

OA 93/2019

EX CHMECH (P) Joju C Joy	Applicant
Versus		
Union of India & Ors.	Respondents

For Applicant	:	Mr. Ved Prakash, Advocate
For Respondents	:	Mr. Shyam Narayan, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

O R D E R
29.02.2024

OA 93/2019

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

“(a) Quash the Impugned letter No. PEN/600/D/LRDO I:01/2018/123071-H dated 13.12.2017.

(b) Direct the respondents to grant Disability Element of Pension to the Applicant duly rounded off to 50% w.e.f. his date of discharge i.e. 01.02.2018..

© Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a from the date of retirement with all the consequential benefits.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."

2. The applicant was enrolled in the Indian Navy on 23.01.1998 and discharged from service on 31.01.2018 after serving the nation for 20 years. The applicant was diagnosed with "ACL TEAR WITH MEDICAL MENISCUS TEAR (LT) KNEE ICD NO. S 80.0" whilst he was serving in INS Rajput, on 27.09.2014. The RMB assessed the disability of the applicant to be 20% for life and considered the disability of the applicant as attributable to service. However, as the applicant refused to undergo the surgery, the net assessment qualifying for disability pension was reduced from 20% to 14% for life.

3. On adjudication, the applicant's claim for the grant of disability element of pension was rejected by the competent authority vide letter No. PEN/600/D/LRDO I:01/2018/123071H dated 13.12.2017 by stating that the disability of the applicant is at 14% (less than 20%). The applicant thereafter sent a 1st Appeal dated 31.05.2018 seeking the relief but no reply has been received from the respondents till date. Aggrieved by the response from the respondents, the applicant has filed the instant O.A. and thus, in the interest of justice, in terms of Section 21(2) (b) of the AFT Act, 2007, we take up the same for consideration.

4. The learned counsel for the applicant submitted that the Release Medical Board has assessed the disability of the applicant at 20% for life and opined the disability of the applicant as attributable to service, but the net assessment qualifying for disability pension was reduced from 20% to 14% for life in view of the applicant's unwillingness for surgery.

5. The learned counsel for the applicant further submitted that the applicant sustained the said injury whilst he was serving in INS Rajput, i.e. a field posting and continued to be on duty till his discharge from the service.

6. The learned counsel for the applicant placed reliance on OA No. 238/2014 titled as *Sukhbir Singh Vs. Union of India*, and submitted that in this case the applicant therein was having disability less than 20% which was rounded off to 50% by the Tribunal and the applicant was granted disability element of pension.

7. The learned counsel for the applicant further relied upon Para 5 of the Entitlement Rules for Casualty Pensionary Awards, 1982, which reads as under:

“The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:

Prior to and during service

(a) A member is presumed to have been in sound physical and mental condition upon entering service

except as to physical disabilities noted or recorded at the time of entrance.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service."

8. Per contra, the learned counsel for the respondents submits that the applicant sustained the said injury to his left knee on 27.09.2014 while playing hockey. The learned counsel for the respondents further submitted that the Release Medical Board had reduced the percentage of applicant's disability ACL TEAR WITH MEDICAL MENISCUS TEAR (LT) KNEE ICD NO. S 80.0" from 20% to 14% (less than 20%) due to his unwillingness for surgery and thus, the applicant becomes ineligible for disability pension in accordance with Regulation 105-B of Navy Pension Regulation, 1964, as his disability qualifying for disability pension percentage which could qualify him for disability pension was reduced to 14% (less than 20%) due to his unwillingness to undergo surgery by the Release Medical Board.

9. The learned counsel for the respondents controverted the submissions made on behalf of the applicant and submitted that although the applicant's disability has been opined as 'attributable to service' but as the same has been assessed @14% (less than 20%), the applicant is not entitled to the disability element of pension and, therefore, the OA deserves to be dismissed. The learned counsel justified the reduction of percentage from 20% to 14% on the ground that the applicant refused to undergo surgery related to the disability, however, he

was placed in low medical category and post-surgery the disability of the applicant could have improved. Hence, the learned counsel prayed for dismissal of the OA.

10. We have heard the learned counsel for the parties and have gone through the records produced before us. In this case, it is an undisputed fact that the applicant had sustained the injury to his left knee diagnosed as ACL TEAR WITH MEDICAL MENISCUS TEAR (LT) KNEE ICD NO. S 80.0” whilst he was serving in INS Rajput, on 27.09.2014 for which he was placed in low medical category. It is also not in dispute that the applicant was advised surgery but the applicant refused to undergo the said treatment. The disability of the applicant was considered to be attributable to military service as is evident from the Release Medical Board proceedings dated on 15.03.2017, available on record. The RMB has initially assessed the disability @20% for life, however, on account of the refusal to undergo requisite treatment/surgery, the percentage of his disablement was reduced to 14% for life and that is the reason why the disability pension was denied to the applicant.

11. The only question for our consideration, in view of the aforesaid facts is, as whether the applicant is still entitled to the benefit of disability pension?

12. We have gone through the RMB proceedings and on going through the same, it is evident that the Medical Board has opined that the success rate of the surgery suggested is approximately

30%. The relevant opinion of the RMB is reproduced herein under:-

“(f) If the reply to (e) is in affirmative, what is the probable percentage to which the disease/disablement could be reduced by operative treatment? 30% (Approx).”

13. *“14. The respondents submit that as per Regulation 104 of Navy Pension Regulation, 1964, it is provided to the effect:-
(a) if the refusal to undergo treatment or an operation is reasonable, the full disability pension normally admissible may be granted.*

(b) if the refusal to undergo treatment or an operation is unreasonable.

(i) If the pension sanctioning authority, in consultation with Medical Advisor (Pension) where necessary decides that an operation or medical treatment will cure the disability.

The disability pension shall be with held but the normal service pension or gratuity, if any, admissible under these regulations, or the pension or gratuity, if any admissible under regulation 110 may be granted, and the disability element or pension shall be restricted to that appropriate to the lower percentage of disablement.

(ii) If the pension sanctioning authority, in consultation with the (Medical Advisor Pension), where necessary, decides that an operation or medical treatment will reduce the disability to a lower percentage.

If that lower percentage is less than twenty per cent, the normal, service pension or gratuity, if any, admissible under these regulations, or the pension or gratuity, if any, admissible under regulation 110 may be granted.”

14. Thus in the light of the Regulation of Navy Pension Regulation, 1964 quoted above, refusal to undergo medical treatment by the applicant herein thus has to be held to be reasonable as it is apparent that in the RMB Proceedings itself it had been expressed therein that the percentage of success after surgery was only 30%, and the reduction of the percentage of disablement of the applicant from 20% to 14% just because the applicant was unwilling to undergo surgery, for a disablement which was well attributable to service, is wholly erroneous.

15. From the record, it is revealed that though in the first instance the disability of the applicant was initially assessed @20% but after the applicant refused to undergo the surgery suggested, it was reduced to 14%. There is no denial of the fact that the applicant suffered the disability which was initially assessed @20% for life and attributable to military service. From the RMB, it is clear that the Medical Board opined the probability to which the disease/disablement could be reduced by surgery/treatment is 30% only and it suggests that the advising doctors were themselves not 100% sure about the success of the surgery, therefore, it could be the probable reason that the applicant showed his unwillingness to undergo the surgery for his right knee. Therefore, the applicant's unwillingness for the surgery can be considered as a valid reason as improvement of the injury post-surgery was reported as 30% only. Therefore in our view, the RMB committed an error in decreasing the percentage of disablement from 20% to 14%. Furthermore, on a perusal of the documents available on record, we find that the Medical Board has nowhere clearly mentioned that the applicant's refusal to undergo the suggested surgery/treatment is unreasonable and hence the applicant's disability is reduced from 20% to 14%. In our considered view the reduction of disability from 20% to 14% was not justified and the applicant's disability percentage ought to be considered 20%.

16. Therefore, in view of our analysis, the OA is allowed and the respondents are directed to grant the benefit of disability

element of pension to the applicant for the disability ACL TEAR WITH MEDICAL MENISCUS TEAR (LT) KNEE ICD NO. S 80.0” which was conceded as attributable to military service by the RMB @20% for life, which is directed to be rounded off to 50% for life with effect from the date of retirement in terms of judicial pronouncement of the Hon’ble Apex Court in *Union of India Versus Ram Avtar (Civil Appeal No. 418/2012)* decided on 10.12.2014.

17. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @6% per annum till the date of payment.

18. There is no order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN C.P. MOHANTY]
MEMBER (A)

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