

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

Suppl1.

OA 1104/2017

Sgt Raj Kishor Mishra (Retd)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Prashant Negi, proxy for  
Mr. SS Pandey, Advocate

For Respondents : Mr. Shyam Narayan, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER  
06.10.2023

Vide our detailed order of even date we have allowed the OA 1104/2017. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court.

After hearing learned counsel for the respondents and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

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**... Applicant**

**Versus**

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**... Respondents**

**For Applicant** : Mr. Prashant Negi , Advocate & Mr. S.S.  
Pandey, Advocate

**For Respondents** : Ms. Shyam Narayan, Advocate

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

Invoking the jurisdiction of this Tribunal under  
Section 14 of the Armed Forces Tribunal Act, 2007, the  
applicant has filed this O.A and the reliefs claimed in Para 8 -  
read as under:

“

***a) Call for the records based on which the  
respondents have rejected the request  
of the applicant for the disability  
pension including the impugned***

*findings of medical board proceeding and orders including order dated 08.03.2016 denying the war injury pension to the applicant.*

- b) Direct the respondents to pay war injury pension to the applicant @30% as assessed by the RMB to be enhanced to 50 % after applying the principles of broad banding w.e.f 01.06.2016 along with arrears with interest @18% per annum.*
- c) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.*

### **BRIEF FACTS**

2. The applicant was enrolled in the Indian Air Force on 20.05.1996. The applicant suffered an injury '**Anterior Cruciate Ligament Tear (Lt) Knee**' on 18.05.2009 whilst jumping obstacle (wall) during 'Akash Yodha' exercise at Air Force station. The Release Medical Board held on 20.08.2015 assessed the injury of the applicant @30 % for life and considered the injury as attributable to military service. However, the disability qualifying element for disability pension was assessed to be Nil for life.

3. The applicant's claim for the grant of the disability element of pension was rejected vide letter No. Air HQ/99798/1/764039/05/16/DAV/(DP/RMB) dated 08.03.2016.

4. On adjudication, AOC AFRO upheld the recommendation of RMB and rejected the disability pension claim of the applicant vide letter No. RO/3305/3/Med dated 15.02.2016. The outcome was communicated to the applicant vide letter No. Air HQ/99798/1/764039/5/16/DAV/DP/RMB dated 08.03.2016 with an advice that he may prefer an appeal to the Appellate Committee within six months from the date of receipt of letter. 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(1) of the AFT Act, 2007, we take up the same for consideration.

### **CONTENTION OF THE PARTIES**

5. The learned counsel for the applicant submitted that the applicant had been deprived of the disability pension which is illegal, arbitrary and in violation of the fundamental rights granted under Article 14,15,16 and 21 of the Constitution of India.



6. The learned counsel for the applicant submitted that the applicant suffered the said injury whilst jumping obstacle (wall) during 'Akash Yodha' exercise at Air Force station, Adampur. The learned counsel for the applicant further submitted that the applicant was thereafter admitted to MH, Jalandhar for Anterior Cruciate Ligament Tear (Lt) Knee which was held to be attributable by the RMB. The learned counsel for the applicant submitted that the the injury is qualified to be categorised as 'Battle Casualty', thereby entitling the applicant to claim the war injury pension.

7. The learned counsel for the applicant submitted that the applicant learnt from friends and colleagues that surgery to improve his disability may further aggravate the condition of the injury, due to which, the applicant did not render his willingness for undergoing the surgery.

8. The learned counsel for the applicant submitted that the applicant's injury was assessed as NANA by the Respondent No. 3 vide their impugned order which was contrary to the observation/opinion of the RMB and the Injury Report.

9. The learned counsel of the applicant also placed reliance on the verdict of the Hon'ble Supreme Court in

***Dharamvir singh Vs. Union of India, Civil Appeal No. 4949 of 2013, (2013) 7 SCC 316***, whilst making submission as to that whether the disability is attributable to or aggravated by military service is to be determined by the Entitlement Rules for Casualty Pensionary Awards, 1982 as shown in Appendix-II , the Government of India letter No. 1(1)/81/d(Pen-C) dated 20.06.1996 and GMO,(MP) 2002.

10. Per Contra, the learned counsel for the respondents submitted that the RMB assessed the injury of the applicant @ 30% for life and held it to be attributable to Air Force service. The learned counsel for the respondents submitted that since, the surgery would have improved the condition of the applicant , therefore, as per para 3 (ii) Chapter V of GMO, 2008, the disability percentage had been reduced and assessed as Nil for life as the applicant had rendered unwillingness for the surgery.

10. The learned counsel for the respondents further relied upon Rule 153 of the Pension Regulation for IAF, 1961 (Part-I) which stipulates that, the primary condition for the grant of disability pension is granted when the personnel is invalided out from service on account of disability is

attributable to or aggravated by military air force service and is assessed at 20% or more and since in the present case one of the twin condition has not been met, the disability pension cannot be granted.

### **ANALYSIS**

11. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that it is not in dispute that the extent of the disability assessed by the RMB is 30% and the minimum qualifying criteria for the grant of disability pension is 20% for grant of disability pension in terms of Para 25 of the Pension Regulation for the Air Force, 1961. In the instant case, it is not in dispute that the RMB had assessed the disability at 30% for life and considered it to be Attributable by Service vide RMB dated 20.08.2015.

12. For coming to a conclusion in respect of the prayer for war injury pension, it would be pertinent to refer to various relevant provisions contained in MoD letter No. 1(2)/97/I/D(Pen-C) dated 31.01.2001, Part II – Pensionary Benefits on Death/Disability in Attributable/Aggravated Cases,



namely, Para 4.1, relevant part of Paras 10, 11 and Para 12 ,  
which read as under :

***"PART II - PENSIONARY BENEFITS ON DEATH/  
DISABILITY IN ATTRIBUTABLE/AGGRAVATED  
CASES***

***4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/aggravated causes, the cases will be broadly categorised as follows: -***

***Category A***

***Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities, chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.***

***Category B***

***Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Diseases contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.***

***Category C***

***Death or disability due to accidents in the performance of duties such as :***

- (i) Accidents while traveling on duty in Government Vehicles or public/private transport***
- (ii) Accidents during air journeys***
- (iii) Mishaps at sea while on duty***
- (iv) Electrocution while on duty, etc.***
- (v) Accidents during participation in organised sports events / adventure activities/ expeditions/training***



#### Category D

Death or disability due to acts of violence/attack by terrorists, anti social elements, etc. whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc. would be covered under this category, besides death/disability occurring while employed in the aid of civil power in dealing with natural calamities.

#### Category E

**Death or disability arising as a result of :**

- (a) enemy action in international war.**
- (b) action during deployment with a peace keeping mission abroad**
- (c) border skirmishes.**
- (d) during laying or clearance of mines including enemy mines as also minesweeping operation.**
- (e) on account of accidental explosions of mines while laying operationally oriented mine-field or lifting or negotiating minefield laid by enemy or own forces in operational areas near international borders or the line of control.**
- (f) War like situations, including cases which are attributable to/aggravated by**
  - (i) extremist acts, exploding mines etc. while on way to on way to an operational area.**
  - (ii) battle inoculation training exercises or demonstration with live ammunition.**
  - (iii) kidnapping by extremists while on operational duty.**
- (g) An act of violence/attack by extremists, anti-social elements, etc.**
- (h) Action against extremists, antisocial elements etc. Death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.**
- (i) Operations specially notified by the Govt. from time to time."**

xxx

xxx

**"10. War Injury Pension on Invalidment**

**10.1** Where an Armed Forces Personnel is invalided out of service on account of disabilities sustained under circumstances mentioned in category 'E' of Para 4.1 above, he/she shall be entitled to War Injury Pension consisting of Service element and War Injury element as follows :

xxx

xxx

**11. War Injury Pension on Retention in Service**

**11.1** Armed Forces Personnel who are retained in service despite the disability due to war injury sustained under circumstances mentioned in category 'E' of Para 4.1 above, and retire subsequently will have an option as follows to be exercised within a period as prescribed by the Government from time to time.

xxx

xxx

**12. Liberalised Disability Pension in respect of Armed Forces Personnel sustaining disability under the circumstances mentioned in Category 'D' of Para 4.1 above.**

Armed Forces personnel sustaining disability under the circumstances mentioned in Category 'D' of Para 4.1 above shall be entitled to same pensionary benefits as admissible to war injury cases on invalidment/retirement/discharge including lump sum compensation in lieu of disability, as mentioned in Paras 10 and 11 above. However, on invalidment they shall be entitled to disability element instead of war injury element in addition to service element. The service element will be equal to. retiring/service pension to which he/she would have been entitled on the basis of his/her pay on the date of invalidment but counting service upto that date on which he would have retired in that rank in the normal course including weightage as admissible. Provisions of Para 6 of Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 03.02.98 shall apply for calculating retiring/

*service pension. There shall be no condition of minimum qualifying service of earning this element. This disability element would be admissible as laid down in para 7.1 (ii)(a) above. For lower percentage of disablement, this amount shall be proportionately reduced. However, in no case aggregate of service element and disability element shall be less than 80% of reckonable emoluments last drawn.*

*Note: Armed Forces personnel sustaining disability under the circumstances mentioned in Category 'D' of Para 4.1 above shall not be treated as War Disabled. Hence, they will not be entitled to any special concession/dispensation otherwise available to war disabled."*

*[Emphasis supplied]*

From a reading of the above, it is clear that the applicant's disability does not fall in category D or E for the grant of war injury pension since the applicant sustained the said injury whilst jumping the wall in 'Akash Yodha' exercise which is not covered by category 'D' or 'E' of the letter mentioned in para 12 above. Moreover, there is no document on record to show that the injury of the applicant was declared as battle casualty by the respondents.

13. Now, the question which is to be answered remains is about the reduction of percentage of disability of the injury by the respondents. The respondents vide their counter affidavit stated that the disability qualifying element for the disability pension was held to be Nil due to the reason that the applicant

rendered unwillingness for the surgery which would have improved the condition of the applicant. The respondents placed reliance on Para 5 (f) of the RMB dated 20.08.2015 wherein the medical board opined the probable percentage to which the disablement could be reduced by operation/treatment was 20%-30%. Para 5 (g) of Part V of the RMB wherein it was specifically asked. "Do the medical board consider individual refusal to submit to operation/treatment reasonable? Give reason in support of the opinion specifying the operation/treatment recommended " and it was stated **"YES, (age factors and uncertain for improvement)"**. It is safe to say that medical science has not developed to an extent that it can state with certainty any conclusive assessment for recovery of the disability, it thus, cannot be said that improvement in the condition is certain and from bare perusal of Para 5 (g) of Part V of the RMB, the respondents have admitted that the improvement for the said disability is uncertain. Therefore, the reduction in the percentage of the disability by the respondents is not proper.

14. Regarding broad-banding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in

***Union of India Vs. Ram Avtar, Civil Appeal No. 418 of 2012***

and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension. We also find that the Government of India vide letter No. F.NO. 3(11)2010-D(Pen/Legal) of, Ministry of Defence dated 18<sup>th</sup> April 2016 has issued the instructions for the implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

**CONCLUSION**

15. Applying the above parameters to the case in hand, we are of the view that the applicant has been discharged from service in low medical category on account of the said injury which is assessed as being attributable to military service and the initial percentage of disablement of 30% disability holds good.

16. Therefore, in view of our analysis, the OA 1104/2017 is allowed and the respondents are directed to grant the benefit of disability pension @30% for life for the injury **“Anterior Cruciate Ligament Tear (Lt) Knee”** which is directed to be

rounded off to 50% for life in view of judgment of Hon'ble Apex Court in ***Union of India Versus Ram Avtar (supra)*** from the date of discharge i.e.01.06.2016. The arrears shall be disbursed to the applicant within 3 months of receipt of this order failing which it shall earn interest @6% p.a. on the arrears till the actual date of payment.

Pronounced in the open Court on this day of 6<sup>th</sup> October, 2023.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

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[JUSTICE ANU MALHOTRA]  
MEMBER(J)