

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

C.

OA 991/2019

Ex Sgt SK Sharma

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Ajit Kakkar & Associates, Advocate

For Respondents : Mr. Vijendra Singh Mahndiyan, Advocate

CORAM

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

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

**ORDER**  
**05.12.2023**

Vide our detailed order of even date, we have allowed the OA 991/2019. 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 our 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, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

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**OA No. 991/2019**

**Ex Sgt S K Sharma**

**... Applicant**

**Versus**

**Union of India &Ors.**

**... Respondents**

**For Applicant : Mr. Ajit Kakkar, Advocate**

**For Respondents : Dr. Vijendra Singh Mahndiyan, 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) *To direct the respondents to produce all service and medical records of the Applicant relating to his disease.*
- b) *To direct the Respondents to grant disability pension to the Applicant from the date of discharge i.e. 31.07.2017.*
- c) *To direct the respondents to grant the benefit of rounding off the disability pension to 50% from the date of discharge.*
- d) *To direct the respondents to issue a corrigendum PPO with the necessary changes pertaining to the disability and broad banding of the disability pension.*
- e) *To direct the respondents to pay arrears of disability pension and broad banding disability pension along with interest @12%.*

*f) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper."*

### **BRIEF FACTS**

2. The applicant was enrolled in the Indian Air Force on 14.07.1997 in a fit medical category. The applicant, thereafter, was discharged from service on 31.07.2017 in low medical category A4G4 (P) after rendering 20 years 18 days of service. The Release Medical Board held on 27.08.2016 opined that the applicant was found to be suffering from **"Prolapsed Intervertebral Disc"**. The said disability was assessed @20% for life, however, the net assessment qualifying for disability pension was assessed as 20% for life and the disability was held as neither attributable to nor aggravated by military service.

3. The applicant's initial claim for the grant of the disability element of pension was rejected vide letter No. RO/3305/3/MED dated 06.04.2018.

4. The applicant, thereafter, submitted the First Appeal on 27.02.2018 to the respondents for the grant of disability pension, and the same was replied to vide letter No. AIR HQ/99798/1/743125/DAV/DP/RMB dated 25.04.2018. 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.

### **CONTENTIONS OF THE PARTIES**

5. The learned counsel for the applicant submitted that the applicant was released from service on 31.07.2017 and the RMB assessed the disability of PIVD at 20% for life. The learned counsel submitted that there is fraud played by the respondents as there are two copies of Part IV and Part V available in the RMB of the applicant and whereas Part IV is the same but in Part V of the RMB, all the Board Members have signed in the initial Part V and the disability was held as aggravated due to stress and strain of service. The second copy of the Part IV and Part V were signed by only two members of the Board but these were not signed by the President of the RMB Board and the applicant and the disability was held as 'neither attributable to nor aggravated by service'.

6. The learned counsel for the applicant 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."*

7. 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 a submission that as to 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, 2002.

8. Reliance was also placed on the verdict of the Hon'ble Supreme Court in ***Ex Sgt Ram Khelawan vs. Union of India*** in OA 314/2017, wherein similarly situated personnel was given relief.

9. The learned counsel for the respondents further submitted that the RMB considered the disability of the applicant to be 20% but held it to be neither attributable to nor aggravated by military service.

10. Per contra, 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 which is attributable to or aggravated by military Air Force service and is assessed at 20% or more. However, since, the applicant does not fulfil one of the twin conditions required for the grant of pension, the applicant is not entitled to the disability pension.

### **ANALYSIS**

11. On a perusal of the record, we find that there are two copies of Part IV and Part V available in the RMB of the applicant. Though, Part IV is the same in both the copies but there are certain amendments in Part V of the RMB. The initial copy of Part IV and Part V signed by all four Board Members as well as by the applicant, mentions that the disability of the applicant was considered as aggravated by the military service due to physical stress and strain of military service in accordance with Para 51 of Chapter VI of Guide to Medical Officers (Military Pensions)- 2002, amended 2008, but the second copy of the Part IV and Part

V of the RMB, which is signed by only two Board Members and not by the President of the RMB Board as well as by the applicant, mentions that the disability is considered as neither attributable to nor aggravated by service in accordance with Para 51 of Chapter VI of Guide to Medical Officers (Military Pensions)-2008. Hence, we are of the view that the first copy which is signed by the all four Board Members as well as by the applicant is considered appropriate to be relied upon by us and the amended copy is not a valid document for consideration. Both the above mentioned Part V (Amended as well as not amended) of the RMB dated 27.08.2016 are reproduced below:-

**Part V –signed by all four Board Members and Individual**

1. Casual Relationship of the disability with service conditions or otherwise				
disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with service (Y/N)	Reasons/cause/Specific condition and period in service.
PIVD C4-C5 ICD NO. S-58.8	No	<div style="text-align: center;"> <input checked="" type="radio"/> Yes         </div> <div style="text-align: center;"> <input type="radio"/> No         </div>	<div style="text-align: center;"> <input type="radio"/> No         </div> <div style="text-align: center;"> <input checked="" type="radio"/> Yes         </div>	The onset of disability was in April 2004 while on the posted strength of 224 Sqn c/o 33 Wing, Jamnagar a peace area station. The disability was not considered as attributable to service, <b>however, considered</b>



		Sd/- & stamp Shikha Sharma Flt Lt Medical officer AF Stn Hakimpet	Sd/- & stamp Soumya Sarita Sqn Ldr medical officer AF Stn Hakimpet	as aggravated by service due to physical stress and strain of military service in accordance with Para 51 of Chapter VI of Guide to Medical Officers (Military Pensions)- 2008 Refers.
Note: A Disability "Not concerned with service" would be neither Attributable nor aggravated service. This is accordance with instructions contained in "Guide to medical officer (Mil Pension)-2008."				

No history of trauma and unguarded movement of spine during service, hence not aggravated by service. **(added in ink)**

**Sd/-**

Shikha Sharma  
Flt Lt Medical  
Officer AF Stn  
Hakimpet

**Sd/-**

**Sd/-**

**Sd/-**

**Sd/-**

**Sd/-**

Sign of individual CH Raj Kumar Ashu Chandra Shikha Sharma Soumya sarita  
Flt Lt Medical Wg Cdr senior Flt Lt Medical sqn Ldr  
Officer AF Stn Medical Officer Officer AF Stn Medical  
Hakimpet AF Stn,Hakimpet Hakimpet AF Stn, hakimpet

### Part V –signed by only two Board Members

1. Casual Relationship of the disability with service conditions or otherwise				
disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not connected with service (Y/N)	Reasons/cause/Specific condition and period in service.
PIVD C4- C5 ICD NO. S- 58.8	No	Yes  No	No  Yes	The onset of disability was in Apr 2004 while on the posted strength of 224 Sqn c/o 33 Wing, Jamnagar a peace area station. There is no recorded history of trauma and unguarded movement of spine during service. Hence the disability is



				considered as neither attributable to nor aggravated by service. Para 51 of Chapter VI of Guide to Medical Officers (Military Pensions)-2008 Refers.
Note: A Disability "Not concerned with service" would be neither Attributable nor aggravated service. This is accordance with instructions contained in "Guide to medical officer (Mil Pension)-2008."				

**Sd/-**

Shikha Sharma Flt Lt  
Medical officer, AF Stn Hakimpet

**Sd/-**

Soumya Sarita Sqn Ldr  
Medical officer, AF Stn Hakimpet

12. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the opinion that it is not in dispute that the extent of disability is assessed by the RMB to be 20%, and the minimum qualifying criteria for the grant of disability pension is 20% or more which is the bare minimum for grant of disability pension in terms of Para 153 of the Pension Regulation for the Air Force, 1961. In the instant case, it is not in dispute that the RMB assessed the disability at 20% for life, and the Part V of the RMB, which is signed by all the Board Members of the RMB and the applicant, has assessed it to be aggravated by military service and hence, the twin conditions *qua* eligibility criteria for grant of disability pension i.e. disability must be either attributable to or aggravated by service, or

degree of disablement should be assessed at 20% or more, have been met for grant of disability pension.

13. 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 18.04.2016 has issued the instructions for the implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

### **CONCLUSION**

14. Therefore, in view of our analysis, the OA 991/2019 is allowed and the respondents are directed to grant the benefit of disability element of pension @20% for life for the disability of PIVD, 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. 31.07.2017. 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. till the actual date of payment.

Pronounced in the open Court on 5 day of December 2023.

**[REAR ADMIRAL DHIREN VIG]**  
**MEMBER (A)**

**[JUSTICE ANU MALHOTRA]**  
**MEMBER(J)**

/nmk/