

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 2047 of 2018

with

M.A. No. 2252 of 2018

In the matter of :

Ex L COM (TAC) Rakesh Ranjan

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Ved Prakash, Advocate

For Respondents : Shri Arvind Patel, Advocate

CORAM :

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

HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

M.A. No. 2252 of 2018 :

Vide this application, the applicant seeks condonation of 158 days' delay in filing the OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

MA stands disposed of accordingly.

O.A. No. 2047 of 2018 :

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

(a) Quash impugned letter No. PEN/600/D/LRDO I:07/2017/133189-B dated 25.04.2017.

(b) Direct respondents to grant the disability element of pension to the applicant duly rounded off to 50% w.e.f. the date of discharge.

(c) 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 facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.

BRIEF FACTS

2. The applicant, having been found medically and physically fit, was enrolled in the Indian Navy on 01.08.2002 and was discharged from service on 31.07.2017 in low medical category S3A2 (P) PMT. The Release Medical Board (RMB) held on 23.02.2017 assessed the disability of the applicant i.e. PROLAPSED INTERVERTEBRAL DISC C6-C7 (ICD M 51.2) @ 20%, and the same was opined by the RMB as 'Aggravated by military service'. However, at the time of making net assessment, the percentage of disablement was reduced to 14% for life due to the fact that the applicant had refused to undergo surgery for the said disability.

3. The initial claim of the applicant for the grant of the disability element of pension was rejected by the CABS vide letter dated 25.04.2017 stating that although the disability was conceded as aggravated by military service but the percentage thereof was assessed at less than 20% i.e. 14%. The applicant sent a Legal Notice-cum-Representation/Appeal dated 15.02.2018 to the respondents seeking grant of

disability element of pension, which, according to the applicant, has not yet been replied to. Aggrieved by the same, the applicant has filed the instant OA.

CONTENTIONS OF THE PARTIES

4. Learned counsel for the applicant pleaded that at the time of joining the Indian Navy, the applicant was found mentally and physically fully fit and there is no note made in his medical documents to the effect that he was suffering from any disease at that time. It is submitted on behalf of the applicant that in September 2011, while the applicant was posted onboard the ship INS Ranvir, a field area posting, he was detected to be suffering from PIVD C6-C7; during treatment, the applicant was advised surgery, but no satisfactory answer regarding the chances of improvement of the disability was given, and the applicant was informed that the surgery would be complicated, involving high degree of risk; the applicant, therefore, submitted an unwillingness certificate to undergo surgery. It is further submitted that while submitting the unwillingness, he was not informed of

the pension regulations and impact on the pensionary issues by the respondents, which can be seen at Para 5(d) and (e) of the RMB proceedings.

5. Learned counsel further submitted that nowhere in the RMB proceedings was it found that the unwillingness submitted by the applicant was unreasonable and as per Appendix II of the Indian Navy Pension Regulations, 1964, the applicant is eligible for disability element of pension. Learned counsel placed reliance on the order of the Tribunal (PB) in the case of **Ex Sep Sukhbir Singh Vs. UOI & Ors. [O.A. No. 238 of 2014]** decided on 08.09.2015, to submit that since the applicant was discharged from service being in permanent low medical category and the disability has already been considered as aggravated by service, he shall be entitled to the disability pension, granting rounding off benefit to 50% as per the letter of the GoI, Mod dated 31.01.2001. Learned counsel, therefore, contended that the respondents committed an error in rejecting the claim of the applicant for disability pension.

6. *Per contra*, learned counsel for the respondents controverted the arguments put forth on behalf of the applicant and contended that although the disability of the applicant was considered as aggravated by service and the same was assessed @ 20%, however, the net assessment of the disability was made as less than 20% (14%) and, therefore, the applicant was not entitled to the relief claimed since the RMB, being an expert body, assessed the disability only at 14% even though it held that it was 'attributable and not aggravated by military service'. The applicant was advised surgery by the specialist medical officer, but he refused to undergo operation and submitted his unwillingness certificate for the same and, therefore, the disability percentage was accordingly reduced to 14%, making him ineligible for grant of disability element of pension in terms of Regulations 104 and 110 of the Navy Pension Regulations, 1964. Hence, learned counsel prayed that the OA maybe dismissed.

ANALYSIS

7. We have heard the learned counsel for the parties and have gone through the record.

8. On careful perusal of the material available on record and also the submissions made on behalf of the parties, since the disability of the applicant was conceded by the RMB to be 'aggravated by service due to stress and strain of military service' hence, the applicant fulfills one of the twin conditions of Regulations 101 and 105B of the Navy Pension Regulations, 1964, which provide that for grant of the disability pension, the disability should be either attributable to and/or aggravated by service and minimum assessment thereof is mandatorily required to be 20% or more. However, the reduction of percentage from 20% to 14% in relation to the said disability does not hold ground, as there is a failure on the part of respondents and medical authority to supply any cogent reason for the said reduction of the percentage. Mere refusal to undergo surgery cannot be accepted as reasonable justification for reducing the percentage of the disability in absence of any reason about the assessment of improvement in the medical condition of the applicant after the treatment.

9. In this regard, we may refer to Regulation 104 of the Navy Pension Regulations, 1964, which provides to the effect:

"104. Refusal to undergo medical treatment. - If a sailor suffering from a disability accepted as attributable to or aggravated by service refuses to undergo an operation, or other medical treatment, which in the opinion of the service medical authority, would cure the disability or reduce the degree of disablement, his case shall be dealt with as follows:-

(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.

<p>*(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.</p>	<p>**The disability pension shall be withheld 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</p>
<p>*(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.</p>	<p>**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.</p>

Explanation. - the question whether a refusal to undergo medical treatment or an operation is reasonable or unreasonable shall be decided in accordance with the rules contained in Appendix VII to these regulations."

Further, Appendix VII to Regulation 104 of the Navy Pension Regulations, 1964 may also be considered which is to the effect:

APPENDIX VII
(See Regulation 104)

“Criteria for deciding whether an individual’s refusal to undergo medical treatment or an operation for his disability attributable to or aggravated by military service, is reasonable or unreasonable.

1. Refusal to undergo medical treatment or an operation shall be held to be reasonable.

(a) When, in the opinion of the medical authorities, it is improbable that such treatment or operation would cure the disability or reduce its percentage or where such treatment or operation may be severe and dangerous to life; or,

(b) When, in the opinion of the Commanding Officer, Ship/ Establishment to undergo the operation or the treatment prescribed, is opposed to religious or caste prejudices of a valid nature and the refusal is the bona fide outcome of such prejudices.

1. Refusal to undergo medical treatment or an operation shall be held to be unreasonable:

(a) When, in the opinion of the medical authorities, it is due to malingering; or,

(b) When, in the opinion of the Commanding Officer, Ship/ Establishment, it is due to a desire to avoid further service or to obtain or retain a pension or to receive an enhanced pension.

2. If in the opinion of the Commanding Officer, Ship/ Establishment, the individual, has grounds not covered by the above paragraphs for refusing medical or.”

10. The RMB assessed the disability of the applicant i.e. PIVD as 'aggravated by military service' due to stress and strain of service and based on nature and course of disability as per Para 51 (d), Chapter VI of Guide to Medical Officer (Military Pension) 2002 amendment 2008. Despite this, the percentage of disablement was reduced from 20% to 14% for the reason that the applicant refused to undergo the surgery in relation thereto. In the RMB proceedings in Part-IV, it was stated therein at Para 5(a) to (e) to the effect:

"5.(a) Was the disease/disability attributable to the individual's own negligence or misconduct? NO

(b) If not attributable, was it aggravated by negligence or misconduct? If so, in what way and to what percentage of the total disablement? NO

(c) Has the individual refused to undergo operation/treatment? If so, individual's reasons will be recorded? YES

Note:- In cases of refusal of operation/treatment a certificate from the individual will be attached.

(UNWILLING CERTIFICATE FOR SURGERY ATTACHED)

(d) Has the effect of refusal been explained to and fully understood by him/her, viz a reduction in, or the entire withholding of any disability pension to which he/she might otherwise be entitled? NA

(e) Does the Medical Board consider it probable that the operation/treatment would have cured the disease/disability or reduced its percentage? NA

(f) If the reply to (e) is in affirmative, what is the probable percentage to which the

disease/disablement could be reduced by operation/treatment? YES, 30% (THIRTY PERCENT)
(g) *Does the Medical Board consider individual's refusal to submit to operation/treatment reasonable? Give reason in support of the opinion specifying the operation/treatment-recommended.*
OPERATION WOULD HAVE REDUCED THE PERCENTAGE OF DISABILITY

11. The RMB had itself stated that even if the surgery had been performed, it would have reduced the disability percentage by 30%, therefore, it can be said that even after surgery, the said disability would have been cured only marginally. Besides, in Part VI of the RMB, it has been stated by the Officer Commanding/Officer-in-Charge, Record Office that, "I consider the man's refusal to undergo operation/treatment to be reasonable for the following reasons : Due to high risk of the operation."

12. Furthermore, it is pertinent to refer to the DGAFMS, MoD letter vide 16036/RMB/IMB/DGAFMS/MA (Pension) dated 16.04.2019 wherein it is clarified that "Refusal to undergo surgery for spinal disorder e.g. PIVD stands to reason and hence should not become a reason to reduce percentage of the disability." Hence, inspite of clear guidelines issued by the

respondents themselves that in cases of PIVD, the refusal for surgery will not entail any reduction in the percentage of the disability, the respondents in the instant case have reduced the percentage of disability from 20% to 14%, which is not tenable.

13. Further, reliance is placed on the order dated 02.05.2023 of the AFT (PB), New Delhi in Ex LME Pramod Yadav vs. Union of India & Ors. [O.A. No. 205 of 2019] and on the order dated 07.07.2022 of the AFT (RB) Lucknow in the case of Amrendra Kumar, CHEA (R) (Retd.) vs. Union of India & Ors. [O.A. No. 177 of 2022], wherein it was observed that :-

“7. Considering all aspect of the case, we are of the opinion that spinal operation has not reached a level of validating and trust where success can be guaranteed for 100% recovery. On the contrary there is a lot of reservations on undertaking spinal operation. Hence, the unwillingness of the applicant for surgery (spinal operation) in our opinion is not a valid ground for reducing his disability percentage from 20% to 16% specially when one considers the complications which are associated with spinal operation. As such, we hold that the percentage of disability of the applicant is 20% for life”.

14. In view of the above, we are of the view that the applicant has been discharged from service in low medical category on account of the disability PIVD, which was assessed as 'aggravated by military service' and the initial percentage of disablement of 20% disability holds good.

CONCLUSION

15. In light of the aforesaid judicial pronouncements and the parameters referred to above, O.A. No. 2047 of 2018 is allowed and the respondents are directed to grant the benefit of disability element of pension @ 20% (for PIVD) for life which is directed to be rounded off to 50% for life from the date of discharge in view of the law laid down by the Hon'ble Supreme Court in **Union of India and Ors. Vs. Ram Avtar [Civil Appeal 418 of 2012]** decided on 10th December, 2014.

16. 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.

17. There is no order as to costs.

Pronounced in open Court on this 25 day of
September, 2024.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT GEN P.M. HARIZ)
MEMBER (A)

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