

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

O.A. No. 617 of 2017 WITH MA 539/2017

In the matter of :

EX MC EAR-II Santosh Kumar Singh Applicant

Versus

Union of India & Ors. Respondents

For Applicant : Shri Praveen Kumar, Advocate

For Respondents : Shri K.K. Tyagi, Sr. CGSC

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R

MA 539/2017

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 190 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***UoI & Ors Vs Tarsem Singh*** 2009(1)AISLJ 371 and in ***Ex Sep Chain Singh Vs Union of India & Ors*** (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 539/2017 is allowed and the delay of 190 days in

filing the OA 617/2017 is thus condoned. The MA is disposed of accordingly.

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

- (a) ***Quash and set aside the impugned letters dated 19 Dec 2016.***
- (b) ***Direct the respondents to grant disability pension @11-14% and also rounding off @11-14% to @50% for life to the applicant with effect from 01 Oct 2016 i.e. the date of discharge from service with interest @12% p.a. till final payment is made.***
- (c) ***Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.***

BRIEF FACTS

3. The applicant, having been found mentally and physically fit after thorough medical examination, joined the Indian Navy on 09.09.1996 and discharged from service on 30.09.2016 on expiry of engagement after rendering total 20 years and 22 days of qualifying service. At the time of retirement from service, the applicant was placed in permanent low medical category S₃A₂ (P) PMT for the disabilities (i) PIVD and (ii) Retroperitoneal Cyst. The Release Medical Board held on 28.10.2021 assessed the

applicant's disabilities '(i) PIVD @ 20% and (ii) Retroperitoneal Cyst @ 20%, with composite assessment of disabilities @ 40% for life holding the disability (i) of the applicant as Not Attributable to; But aggravated by the military service and (ii) as Neither Attributable to Nor Aggravated by military service. However, as the applicant refused to undergo the surgery for the disability 'PIVD', the net assessment qualifying for disability pension was reduced from 20% to 11-14% for life.

3. The initial claim of the applicant for grant of the disability pension was rejected by the competent authority and the said decision was communicated to the applicant vide letter dated 06.09.2016 with an advice that in case, the applicant is not satisfied with the decision of the respondents, he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the above mentioned letter by him. The applicant served a Legal Notice dated 16.10.2016 which was replied to by the respondents vide letter no Air LC/PEN/600/Legal/Notice/198112 dated 19.12.2016. The applicant preferred the first appeal dated 14.10.2016 which was rejected by the Appellate Committee and the decision

was communicated to the applicant vide letter dated 22.07.2022. Aggrieved by this, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21(2) of the AFT Act, 2007, we take up the same for consideration in terms of Section 21(2) of the AFT, Act 2007.

CONTENTIONS OF THE PARTIES

4. The learned counsel for the applicant submitted that the prayers made in the present OA are confined to the grant of disability element of pension in relation to the disability of PIVD @ 20% for life only and the prayer made for grant of disability element of pension in relation to disability Retroperitoneal Cyst (Optd) is not pressed.

5. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit mentally and physically and no note of disability was made in his medical record at the time of entering the service and any medical disability contracted by him during the course of his service should be treated as being attributable and aggravated by the stress and strain of his service. The learned counsel explained about the stressful and challenging conditions of service during his

service tenure. The learned counsel submitted that the applicant was posted at various stations (Peace and Field) and had served in tough and different weather and environmental conditions in his career and discharged all assigned duties with utmost dedication in a well-disciplined and professional manner and thereby, any disability that arose during his service has to be deemed to be attributable to or aggravated by military service.

6. The learned counsel for the applicant further contended that the instant matter is squarely covered by a catena of judgments of the Hon'ble Supreme Court such as ***Union of India and Ors. Vs. Rajbir Singh [(2015) 12 SCC 264]***, ***Civil Appeal No. 418 of 2012*** titled as Union of India Vs. Ram Avtar on 10.10.2014 and the orders passed by this Tribunal and submitted that the respondents' action in denying the grant of the disability pension to the applicant is unjustified and unlawful because the disability 'PIVD' recorded by the RMB occurred during the military service and was considered aggravated due to stress and strain of the military service. The learned counsel, therefore, prayed that the disability pension may be granted to the applicant.

7. *Per contra*, the learned counsel for the respondents contended that the RMB had assessed the applicant's disability (a) as aggravated by the military service but the percentage were reduced from 20% to 11-14% due to his unwillingness for the surgery and therefore his claim for grant of disability pension was rejected by the competent authority. The learned counsel further submitted that the applicant's disabilities do not fulfil the necessary conditions for being eligible to get disability pension in terms of Regulation 101 of the Navy Pension Regulations, 1964, thus the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

ANALYSIS

8. In view of the disability of 'Retroperitoneal Cyst' not being pressed, we adjudicate only the disability of 'PIVD'. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the applicant has been suffering from the disability of PIVD @ 20%. The RMB considered the disability of the applicant 'PIVD' @20% as 'aggravated due to stress and strain of the military service' but as the applicant refused to undergo the surgery for the disability 'PIVD', the net

assessment qualifying for disability pension was reduced from 20% to 11-14% for life.

9. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, since, the said disability of the applicant was considered to be 'aggravated by military service'; hence, the applicant fulfils one of the twin conditions of Regulation 101 of the Navy Pension Regulations, 1964, for the grant of disability pension. However, the reduction of percentage from 20% to 11-14% 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. The RMB assessed the disability of the applicant i.e. PIVD as 'aggravated by military service' due to physical 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 11-14% for the reason that the applicant refused to undergo the surgery in relation thereto. The RMB proceedings further indicate to the effect that it was stated therein in Para-5(a) to (h) to the effect:-

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

(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, NA

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

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

(e) Does the Medical Board consider it probable that the operation/treatment would have cured the disease/disability or reduced its percentage? Yes, surgery would have reduced the percentage but would not have completely cured

(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? 30% of the disability percentage

(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. No, Surgery recommended by treating orthopaedician."

10. The RMB had itself stated that even if the surgery had been performed, it could have probably reduced the disability percentage by 30%, therefore, even after the surgery, the said disability would be cured marginally only.

11. In support of our view, reliance is also placed on 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."* In spite 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 disability from 20% to 11-14% which is not tenable.

12. Further, reliance is placed on the order dated 02.05.2023 of this Tribunal in OA 205/2019 in **Ex LME**

Pramod Yadav vs. Union of India & Ors. and on the order dated 07.07.2022 in OA 177/2022 of the AFT, Regional Bench, Lucknow in the case of **Amrendra Kumar, CHEA ® (Retd.) vs. Union of India & Ors.** which reads as under:-

"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."

13. 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 disability PIVD, which is assessed as 'aggravated by military service' and the initial percentage of disablement of 20% disability holds good.

CONCLUSION

14. In view of our analysis made above, the OA 617/2017 is allowed. The respondents are directed to grant the disability element of disability pension to the applicant @

20% for life which is directed to be rounded off to 50% for life from the date of discharge in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of ***Union of India Vs. Ram Avtar (Civil Appeal No. 418/2012)*** decided on 10.12.2014.

15. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three 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.

16. There is no order as to costs.

Pronounced in open Court on this 6th day of December, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (J)

/nmk/