

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

B..

OA 1053/2018 with MA 933/2018

Ex MCEA (P)-II Jai Pal Singh	.....	Applicant
Versus		
Union of India & Ors.	.....	Respondents

For Applicant	:	Mr. Virender Singh Kadian, Advocate
For Respondents	:	Mr. Satya Ranjan Swain, Advocate

CORAM

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

ORDER  
19.04.2024

Vide our detailed order of even date, we have allowed the main OA No.1053/2018. Faced with this situation, learned counsel for the respondents makes an oral prayer for grant of leave for impugning the order to the Hon'ble Supreme Court in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the respondents and going through 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, therefore prayer for grant of leave to appeal stands dismissed.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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

**ORDER**

**MA 933/2018**

This is an application filed under Section 22 of The Armed Forces Tribunal Act, 2007 seeking condonation of delay of **100** days in filing the present OA which is allowed for the reasons stated in the application despite opposition on behalf of the respondents. The MA is disposed off accordingly.

**OA 1053/2018**

2. Invoking the jurisdiction of this Tribunal under Section 14 of The Armed Forces Tribunal Act, 2007, the instant OA has been filed praying for the following reliefs :-

***(a) Quash and set aside the impugned letter No  
LC/Pen/600/legal notice/120451B dated 08.08.2017.***

- (b) *Direct respondents to grant of disability element of pension @50% by granting benefits of broad banding in terms of Govt of Indi, Min of Defence letter No 1(2)/97/D(Pen-C) dated 31.01.2001. and/or*
- (c) *Direct respondents to pay the due arrears of disability pension with interest @12% p.a from the date of discharge 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.*

### **BRIEF FACTS**

3. The factual matrix of the case is that the applicant was enrolled in the Indian Navy on 27.01.1997 and discharged from service on 31.01.2017 on expiry of engagement after rendering total service of 20 years and 05 days in low medical category S3A2(P). At the time of his retirement he was brought before the Release Medical Board on 25.10.2016 which found the applicant suffering with the disability of **PIVD LV3-4 ICD NO M-51.0 @ 20% for life - Attributable to service which was reduced to 14% for life** since the applicant had shown unwillingness for the surgery which could have improved the condition of the applicant.

4. The claim for grant of disability pension was rejected vide letter No PEN/600/D/LRDO/I:02/2017/120451B dated 05.12.2016

stating that the applicant is not entitled for disability pension in terms of Regulation 100 of Navy (Pension) Regulations 1964 as disability is considered attributable but not aggravated with the assessment @14% for life, and therefore, disability qualifying for pension was 'NIL'.

5. The applicant, thereafter, served a legal notice dated 09.05.2017 for grant of disability pension @50% from the date of discharge. The appeal was rejected and replied vide Naval Pension Office letter No LC/PEN/600/Legal Notice/120451 dated 08.08.2017. Aggrieved by the rejection of the claim for the disability pension, the applicant has filed the instant OA 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**

6. The Learned Counsel for the applicant submitted that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service. The applicant suffered disability of PIVD LV 3-4 while he lifted heavy weight which accidentally caused injury on 13.10.2004 during performing the bonafide military duties.

7. The learned counsel also submits that the Injury report and the Release Medical Board held at the time of discharge from service assessed his disability PIVD LV3-4(M 51.0) @ 30% reduced to 20% and the net assessment qualifying for pension was assessed @14% for life - Attributable to service. The disability pension was not granted in terms of Regulations 100 of Navy (Pension) Regulations 1964 since the disability PIVD LV 3-4(M 51.0) is attributable but not aggravated at Nil % less than 20% Nil.

8. Per Contra, Learned Counsel for the respondents submits through the counter affidavit that RMB considered the disability as Attributable to service but not aggravated by the service with the assessment @14% for life however disability qualifying for pension as 'NIL' therefore the applicant is not entitled for disability pension.

9. The Learned Counsel for the respondents also submits that as per Regulation 101 and 105-B of Navy Pension Regulations 1964 the disability should be attributable to or aggravated by Naval Service and minimum assessment for the disability is required to be 20%.

10. The Learned Counsel further submits that the applicant had given his unwillingness / refusal to undergo treatment / surgery for the disability and his disability percentage could have been reduced if the applicant had undergone the treatment/ surgery.

### **ANALYSIS**

11. On a consideration of the submissions made on behalf of either side, the only question for consideration before us is whether refusal/unwillingness to undergo surgery for a disability will be a reasonable ground to deny grant of disability pension claim, specifically when the disability has been held to be attributable to and aggravated by military service by a duly constituted medical board.

12. It is essential to observe in the instant case vide Part-V at Page 5 Para 5 (c) (e) (f), (g) and Para 6 of AFMSF-16, annexed at Page 23 of the submission of the applicant and Page 95 of the Counter Affidavit, it had been specifically stated to the effect:

***"5. (c) Has the individual refused to under operation/ treatment?"***

***If so, individual's reason will be recorded***

***Yes, unwillingness of surgery attached dated 05 Nov 14***

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

***(e) Does the Medical Board consider if probable that the operation/treatment would have cured the disability or reduced its percentage ?*** ***YES***

**(f) If the reply to (e) is an affirmative, what is the probable percentage to which the disablement could be reduced by the operation/treatment ?**

**30% (Thirty Percent)**

**(g) Does the Medical Board consider individual's refusal to submit to operation/treatment reasonable? Give reasons in support of the opinion specifying the operation/treatment recommended.**

**The medical board opines that disability symptoms would have reduced considerably post-surgery.**

**6. what is present degree of disablement as compared with a healthy person of the same age and sex?**

**(Percentage will be expressed as Nil or as follows) 1-5%, 6-10%, 11-14%, 15-19% and**

**Thereafter in multiples of ten from 20% to 100%.**

<i>Disability (As Numbered in Question 1 Part IV)</i>	<i>Percentage of Disablement with duration</i>	<i>Composite Assessment for all disabilities With duration (Max 10% with duration)</i>	<i>Disability Qualifying For disability Pension with duration</i>	<i>Net assessment Qualifying for disability Pension (Max 100% With duration)</i>
<i>PIVD LV 3-4 M51.0</i>	<i>20%</i>	<i>20% 30% (Thirty Percent) Reduced for unwilling to Surgery, Certificate attached)</i>	<i>14%</i>	<i>14% Life Long</i>

13. The refusal to undergo medical treatment by the applicant herein has to be held to be reasonable as it is apparent that in the RMB Proceedings itself it had been expressed therein that the refusal for surgery by an individual of the disability is considered reasonable and the denial of grant of disability pension just



because the applicant was unwilling to undergo surgery, for the disability which are well attributable to and aggravated by service, is wholly erroneous. In this context it is relevant to refer to DGAFMS, IHQ of MoD letter No 16036/RMB/IMB/DGFS/MA(Pension) dated 16.04.2018 which reads to the effect :-

***"1. It has been observed that many RMBs are reducing percentage of disability for Spinal Disorders e.g. PIVD in cases where individuals have refused to undergo surgery.***

***2. In this context, Para 3, Chapter V, GMO 2002 clarifies that if the refusal to undergo an operation is reasonable, full disability pension normally admissible may be granted. Refusal to undergo an operation may be held reasonable when, in the opinion of medical authorities, it is improbable that such operation would cure the disability or reduce its percentage, or if such operation may be severe and dangerous to life. Surgeries performed for Spinal Disorders e.g. PIVD have the probability to cure the disability. However, there are underlying complications. Recurrence of symptoms subsequently to initial relief is also a probability, because of early onset of osteoarthritis. Therefore, the refusal of an individual to undergo surgery for Spinal Disorders e.g. PIVD stands to reason and hence should not become a reason to reduce percentage disability."***

### **CONCLUSION**

13. In view of the aforesaid analysis, the prayer made by the applicant in the present OA is thus allowed and the respondents are directed to grant the disability element of pension to the applicant in relation to the disability PIVD LV 3-4@ 20% for life rounded off to 50% from the date of discharge (31.01.2017),



However, the arrears shall be restricted to three years prior to the date of filing of OA (17.05.2018) keeping in view the law laid down in the case of **Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649]**.

14. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

15. With the aforesaid directions, the present OA 1053/2018 is disposed of.

Pronounced in the open Court on this day of 6<sup>th</sup> April, 2024.

  
**(JUSTICE RAJENDRA MENON)**  
**CHAIRPERSON**

  
**(LT GEN C.P. MOHANTY)**  
**MEMBER (A)**

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