

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

OA 1203/2020 WITH MA 1762/2024

JWO B D Pandit Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Ms. Barkha Babbar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P MOHANTY, MEMBER (A)

ORDER

MA 1762/2024

This is an application filed by the Respondents under section 12(5) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 32 days in filing the affidavit in compliance with the Order dated 18.01.2024 is allowed and the affidavit is taken on record. The MA is disposed of accordingly.

OA 1203/2020

2. Vide the present OA, the applicant makes the following prayers:

(a) To direct the respondents to grant the applicant Disability pension @90% broadbanded to 100% from the date of discharge w.e.f.31.01.2020 and treat the disability as attributable to and aggravated by military service.

(b) To direct the respondents to pay pension from the date of discharge i.e.31.01.2020 along with interest @10% per annum.

(c) Pass any other or such further order or orders as deemed fit to this Hon'ble Tribunal in order to secure the ends of justice of the applicant;

3. The applicant, namely JWO BD Pandit (Retd.) was enrolled in the Indian Air Force on 26.10.1981 and was discharged from service on 31.01.2020 under the clause "On attaining the age of superannuation" after rendering total 38 years and 95 days of regular service. Before enrolment, the applicant underwent the initial medical examination and had been declared fit in medical category 'AYE' vide AFMSF-2A dated 09.06.1981.

4. The applicant submits that whilst serving he was on annual leave from 26.01.2010 to 30.07.2010. On 15.07.2010, he met with a road accident while coming back home from market and had sustained an injury "fracture acetabulum (RT)". The injury report mentioned that the injury sustained by the applicant was not attributable to service.

5. The respondents through their counter affidavit have submitted that the applicant was placed initially in low medical category A4G4 (T-24) for ID: Fracture Acetabulum (RT) with Central Fracture Dislocation - OPTD (THR DONE) FRESH vide

AFMSF-15 dated 31.05.2011. Subsequently, he was placed in LMC A4G4 (P) vide AFMSF - 15 dated 19.09.2011.

6. The Release Medical Board qua the applicant not solely on medical grounds was held at 6C & MU, AF (Bihta) vide AFMMSF-16, dated 19.02.2019 and the applicant was found fit to be released in low medical category A4G4(P) with disability of "FRACTURE ACETABULUM (RT) WITH CENTRAL FRACTURE DISLOCATION (RT) HIP OPTD THR DONE WITH ACL TEAR AND GR1 MCL TEAR (RT) KNEE". The Release Medical Board specifically opined that the disability is neither attributable to nor aggravated by military service and the assessment for qualifying of the disability pension was 'NIL' though the composite assessment of the disability was assessed @90% for life long. The Release Medical Board was approved by Dy. PMO HQ SWAC, IAF dated 01.05.2019. The AOC AFRO upheld the recommendations of the RMB and rejected the disability pension claim of the applicant vide letter dated 30.06.2019. The outcome of the same was also communicated to the applicant vide letter dated 19.09.2019. During the course of submissions on 18.01.2024 the learned counsel for applicant confined the prayer made in the OA to only the grant of disability element of

pension on the basis of aggravation by military service as the applicant is already in receipt of service element of pension.

7. It is submitted on behalf of the applicant that his First Appeal/Representation dated 13.02.2020 for the grant of disability element of pension was rejected by the respondents vide letter dated 16.03.2021. In this letter, it was mentioned that the injury had been sustained by the applicant on 15.07.2010 in a road traffic accident while he was coming back from the market after being hit by a four wheeler. It had been noted that the injury had been held to be not attributable to service.

8. As already observed hereinabove at Para 6, the applicant vide his submissions dated 18.01.2024 submits that his prayer is confined to the grant of disability element on the ground of aggravation alone. Inter alia, it is submitted by the applicant that he suffered the injury in the year 2010, and he served in the Air Force thereafter for almost 10 years, before he was discharged in LMC on 31.01.2020

9. The respondents vehemently opposed the prayer made on behalf of the applicant submitting to the effect that in terms of the verdict of the Hon'ble Supreme Court in *Union of India Vs Damodaran AV* in SLP 23727/2008 and in *Controller of*

Defence Accounts (Pension) & Ors Vs Balachandra Nair, [AIR 2005 SC 4391], the opinion of the Medical Board is entitled to be given due weight, value and credence and ought not to be interfered with by any Court or Tribunal. The respondents have also placed reliance on Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-1) to submit to the effect that the disability pension is to be granted to those individuals who are invalided from service whilst simultaneously the disability must be either attributable to or aggravated by service and the degree of disablement should be at 20% or more. The respondents thus submit that in the instant case, the RMB assessed the disability as neither attributable to nor aggravated by military service. The respondents thus submit that the criteria in terms of Rule 153 of the Pension Regulations for the Air Force, 1961(Part-1) has not been fulfilled and thus, there is no question of rounding off the disability percentage.

ANALYSIS

10. We have heard the rival submissions of both the parties, and have perused the documents placed on record. Before advertng to the issue under consideration, we find it pertinent to refer to the posting profile of the applicant provided in Part I-

Personal Statement of the Release Medical Board dated 19.02.2019 and the same is reproduced as under:

PART I

“PERSONAL STATEMENT

1. Give details of service (P=Peace OR F=Field/Operational/Sea Service)									
SNo	From	To	Place/Ship	P/ F	S No	From	To	Place/Ship	P/F
(i)	26.10.81	10.02.83	MTI/TAMBARAM	P	(ii)	11.02.83	24.08.83	3 SQN/18 WING	P
(iii)	25.06.83	20.07.84	MTI/TAMBARAM	P	(iv)	21.07.84	10.02.87	21 SQN/PUNE	P
(v)	11.02.87	28.05.88	21 SQN/ JAMNAGAR	P	(VI)	29.05.88	31.01.92	21 SQN/ CHANDIGARH	P
(vii)	01.02.92	24.07.94	51 SQN/ SRINAGAR	F	(VIII)	25.07.94	26.07.98	MIG21T/BARRAC KPORE	P
(ix)	27.07.98	21.09.2003	MTI/ TAMMBARAM	P	(x)	22.09.2003	28.09.2009	21SQN/SIRSA	P
(xi)	29.09.2009	18.08.2013	21SQN/ JODHPUR	P	(xii)	19.08.2013	27.05.2018	11 BRD/ OJHAR	P
(xiii)	28.05.2018	31.01.2020	6C&MU/BIHTA	P					

11. The posting profile of the applicant reveals that the applicant was employed in the trade of ‘Air Frame Fitter (AF Fit)’ and that he suffered the injury on 15.07.2010 while on annual leave from 21.06.2010 to 30.07.2010. At that time he was posted at 32 SQN, Jodhpur, a Peace Station, from 29.09.2009 to 18.08.2013. He met with the above mentioned accident while returning home from the market and suffered a FRACTURE ACETABULUM (RT) WITH CENTRAL FRACTURE DISLOCATION (RT) HIP OPTD THR DONE WITH ACL TEAR AND GR 1 MCL TEAR (RT) KNEE with disability which was assessed @90%, though the disability qualifying for the disability pension was assessed as NIL for life. Subsequently, he was posted at 11BRD,

Ojhar from 19.08.2013 to 27.05.2018, and at 6C&MU, Bihta from 28.05.2018 to 31.01.2020, both of which are peace stations.

12. With respect to the issue of aggravation, we now proceed to examine the opinion of the Specialist dated 13.02.2019 which is reproduced as under:

“OPINION SUMMARY

Diagnosis :- FRACTURE ACETABULUM (RT) WITH CENTRAL FRACTURE DILOCATION (RT) HIP (OPTD)-THR DONE WITH ACL TEAR AND GR 1 MCL TEAR (RT) KNEE

in LMC A3(P) wef 03 Dec 2018 for RMB vide letter No RO/2509/I/RW (DLS) dated 18 Sep 2018 of Air Fore Record Office.

Onset : DOI-15/07/2010; MOI (RTA-on leave) presently C/o pain (RT) hip on prolonged walking/exertion.

On Examination :- (RT) hip :- Well healed surgical scars. No swelling/deformity, No local tenderness ROM-flexion 0=1LO, abduction 0°-30°, ER 0°-30°. No lingo length discrepancy. No distal neurovascular deficit.

(RT) Knee :- Well healed post-traumatic scars. No joint line tenderness. ACL Car 2 laxity present MCL Car 1 laxity present ROM 0°-100° flexion. No distal neurovascular deficit.

Investigations :-

X-ray pelvis with both hips (No R 620 dt 05.02.19)-s/o post THR status (RT) with heterotropic ossification around (RT) hip.

X-ray (RT) Knee (No PRHR dt 14/2/19) -s/o congruent joint with early OA changes.

Management. Initially managed conurvatively, later he became symptomatic with pain (RT) hip and developed secondary ateoarthrilic changes. He was managed with incemented THR (RT) with FMT stem and artabular reconstruction with autograft and trabecular metal hell and cemented XLP liner on 04 Feb 2011 at AHRR.

Medical classification : To be released from service in LMC A3(P) or equivalent in Air Force.

Employability Restrictions: As per medical category.

Sd/-xxxx
(Naveen BM)
Lt Col
Gd Spl (Orthopaedics) "

13. We consider it essential to refer to the Opinion of the Specialist dated 18.11.2012, which is reproduced below:

"OPINION OF COL S SURESH KUMAR, VSM, CL SPEC (ORTHO) AH
(R&R), DATED 18 NOV 2012

FINAL DIAGNOSIS

1. FRACTURE ACETABULUM RT WITH CENTRAL FRACTURE DISLOCATION-OPTD (THR DONE)

2. Tear CL and MCL Rt Knee.

Narrative: Patient is an old known case of fracture acetabulum right with central fracture dislocation DOI 15 Jul 2010 (MOLRTA. Initial mgt at MH Danapur and BH Lucknow where he was managed conservatively on traction and non-weight bearing. He was then sent on sick leave. After sick leave he reported to MH Jalandhar where he was found to have poor hip function and transferred to CH (WC) from where he was trf to this centre. Evaluation revealed poor harris hip score of 22 with acetabulum wall defect and destroyed femoral head. On 04 Feb 2011 he underwent THR with authograft reconstruction of acetabular. Trabecular metal cup with cemented poly line and FMT stem with metal head 28 mm. He was advised on weight bearing till graft incorporation. After sick leave he was reviewed and placed in A4G4 wef Nov 2011. He now reports for recat. The knee injury was managed conservatively.

Complaints : Mild activity related to Pain in the geuteal region occasionally. Otherwise better than better. Ha restricted knee bending.

On Examination

Right Hip. Well healed poster lateral cesarean scar. Scars of old surgeries along antelateral aspect of hip (lateral pin insertion portal. No signs/swelling/tenderness. No surrounding induration. No Limb length discrepancy. No neurovascular deficit. Passive hip flexion movements upto 90 degree are painless. No significant thigh muscle wasting. NO neurovascular deficit.

Rt Knee. Healed irregular lacerated wound L shaped sustained during the initial RTA) 90 degree ROM. No Bony tenderness. Lachman Test negative.

X Rays. Post operative picture of Uncented THR on Right side, with well consolidated acetabular bone grafts and mature grade 3 HTO periacetabular region extending to trochanter.

Old MRI Knee: Grade 1 tear ACL/MCL with small metallic debris in lateral parapatellar retinaculum.

Rec. To continue in LMC A3(A4G4)

Adv:

- 1. Activities as advised*
- 2. Post Hip arthroplasty precautions as examined.*
- 3. To use stick support. Excused wear of boot with laces.*
- 4. Fit for sedentary duties only. PFG/Drill in/Night Guard Duties etc.*

Prosthesis Used: Trabecular Metal acetabular revision shell 58mm OD. Revision Liner HX Poly 10 degree line fact, 28mm ID mm D (mismatch with shell made up with cement mantle) 1 supplemental screw. FMT stem size 12, system Mesys Metal head 28mm+Oreck 12/14 taper.

sd/-xxxxxx
(S Suresh Kumar)
Col
Sr Adv (Ortho Surg)
Army Hosp (R&R) "

14. On a perusal of the opinion of the Specialist dated 13.02.2019, we do not observe any worsening of the condition or any factors with respect to the injury of the applicant, when compared to the opinion of the Specialist dated 18.11.2012. In fact, there has been a gradual improvement in the medical condition of the applicant, including range of motion with respect to flexion and there is no distal neurovascular deficit. More importantly, had the medical condition of the applicant aggravated due to the injury, the probable course of action would have been to invalidate him from service, however, he

remains in A4G4 medical category constantly over the years, thus, signifying no aggravation to the disability of the applicant.

15. Qua the question whether the said disability is aggravated by service, on a base perusal of the medical records placed before us, it is observed that the applicant was placed in medical category A4G4(T-24) on 31.05.2011 at the time of sustaining injury and later graded on 19.11.2011 as A4G4(P) which was maintained as A4G4(P) as per opinion of Recategorisation Medical Board held at 32 Wing Air Force on 29.11.2012. At the time of release the Release Medical Board (RMB) held at 29 Wing IAF graded the applicant A4G4(P) on 19.02.2019. Therefore, in light of the above medical findings, it having been observed that there has been no down-gradation of the medical category, and therefore we cannot accept the submissions of the applicant that the disability has been aggravated due to Air Force Service.

16. Accordingly, the OA 1203/2020 is thus dismissed.

Pronounced in the open Court on 23rd day of September 2024.

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

(JUSTICE ANU MALHOTRA)
MEMBER (J)

Akc

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JWO BD Pandit (Retd)

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