

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

C..

OA 1478/2019 with MA 2397/2019

Ex SGT Satyendra Kumar Sahoo Applicant
VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. US Maurya, Advocate
For Respondents : Gp Capt. Karan Singh Bhati, Sr. CGSC

CORAM

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

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

08.02.2024

Vide our detailed order of even date, we have allowed the OA 1478/2019. 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 ccounsel 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)

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

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

OA No. 1478 of 2019 with MA 2397/2019

Ex Sgt Satyendra Kumar Sahoo

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. A.K. Chaudhary, Advocate

For Respondents : Mr. Prabodh Kumar, Advocate

CORAM :

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

HON'BLE LT. GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 2397/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 199 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 2397/2019 is allowed despite opposition on behalf of the respondents and the delay of 199 days in filing the OA 1478/2019 is thus condoned. The MA is disposed of accordingly.



1. The applicant vide the present O.A 1485/2019 has made the following prayers:-

“(a) Impugned order dated 13.08.2018 be set aside; passed by the respondent No. 4 to the extent this order deny the grant of Disability Element of Disability Pension to the applicant as disability was assessed less than 20%.

(b) Direct Respondents to grant Disability Element wef 01.04.2018(date of discharge) @50% (after rounding of from 15-19% to 50%) as applicant's case is squarely covered in the case of Sukhvinder Singh Vs. UOI (Civil Appeal No. 5605/2010 judgment dated 25.06.2014 by Hon'ble Supreme Court) being disability element below 20% i.e. (6-10%) & Ex Sgt AK Verma Vs. UOI & Ors. (OA 51/2016 with MA 24/2016 order dated 08.03.2016 passed by this Hon'ble AFT (PB) New Delhi) (Annexure A-4).

(c) Direct Respondents to grant rounding of disability element @50% being disability assessed below 20%(15-19%) as applicant's case is squarely covered on the matter of rounding of disability pension discharge on superannuation/ on completion of terms of engagement by Hon'ble Supreme Court order dated 10.12.2014 in Civil Appeal No. 418/2012 titled Union of India and Ors Vs. Ram Avtar(Annexure A-7).

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.”

2. The applicant No. 743361A Ex Sgt Satyendra Kumar Sahoo was enrolled in the Indian Air Force on 23.03.1998 and discharged from service on 31.03.2018 under the clause “On fulfilling the conditions of his enrolment’ after rendering total 20 years and 09 days of regular service. The applicant was diagnosed as a case of PIVD L5-51 and recommended to be placed in LMC A4G4(T-24) vide AFMSF-15 (initial medical board) dated 29.08.2013. Subsequently, he was placed in LMC A4G4(P) for ID: PIVD L5-S1 vide AFMSF-15

dated 17.05.2017. His RMB not solely on medical grounds was held at 12 WG, AF vide AFMSF-16 dated 03.08.2017 which found him fit to be released in Low Medical Category A4G4(P) for ID: PIVD L5-S1. The RMB however considered his disability as not attributable but aggravated by service for the reasons that the applicant was a technician- Radar Fitter, working on IL-76 ac and his job involved strenuous job, climbing on ac and at time lifting heavy weights. The RMB also opined to the effect that there was no delay in diagnosis and that the disability was due to stress and strain of service and referred to the Para-51 of Chapter-VI of GMO(MP), 2002 as amended in 2008 thought the onset of the disability was in August, 2013 in Agra, a Peace Area. The percentage of disablement was however assessed by the RMB as under:-

“

3. What is present degree of disease/disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows) 5%,10%,15% and thereafter in multiples of ten from 20% to 100%				
Disease/Disability (As numbered in Para 1 Part VI)	Percentage of disablement	Composite assessment for all disabilities (Max 100%) with duration	Disability Percentage Qualifying for Disability Pension with duration	Net Assessment Qualifying for disability Pension (Max 100%) with duration
PIVD L5-S1 M 51.1	30%-15%=15% (after discounting unwillingness to undergo surgery)	15%-19% for life	Nil	Nil for life

”

Thus though it was assessed with the percentage of disablement @30%, it was discounted by 15% in view of the applicant being unwilling to undergo surgery and the composite assessment of the disability was thus put forth as being @15-19% for life with the net assessment qualifying for disability pension at Nil.

3. The said RMB was approved by Dy PMO(S), HQ WAC, IAF dated 23.02.2018 which was upheld by the AOC AFRO which rejected the disability pension claim vide letter No. RO/3305/3/Med dated 15.05.2018 and the applicant was informed of the same vide letter dated 13.08.2018 with an advice that he may prefer an appeal to the Appellate Committee for First Appeal(ACFA) within six months from the date of receipt of letter. No first appeal is indicated to have been filed by the applicant, however, the OA has been pending since its institution on 04.09.2019 and in the interest of justice in terms of Section-21(1) of the AFT Act, 2007 we consider it appropriate to take up the OA for consideration.

4. It is the avowed contention of the respondents that in terms of Regulation-153 of the Pension Regulations for the IAF, 1961(Part-I), 1), the primary conditions for the grant of disability pension are:-

“Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which

is attributable to or aggravated by Air Force service and is assessed at 20% or over."

In other words, the respondents contend that the disability pension is granted to those who fulfill the following two criteria simultaneously:-

- "(i) Disability must be either attributable to or aggravated by service.*
- (ii) Degree of disablement should be assessed at 20% or more."*

and thus it was submitted on behalf of the respondents placing reliance on the verdict of the *UOI & Ors. Vs. Wing Commandar S.P. Rathore* in Civil appeal no. 10870/2018 that the disability having been assessed with a percentage of disablement at less than 20%, the applicant is not entitled to the grant of disability element of pension.

5. It is submitted on behalf of the applicant to the effect that the RMB proceedings itself indicated vide Para-5(c),(d) and (g) of Part-V of the RMB as under:-

"5.

...

(c) Has the individual refused to undergo operation/treatment? If so, individual's reason will be recorded? Note: In case of refusal of operation treatment a certificate from individual will be attached.

Yes

(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

(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. No, the individual was recommended surgery. The likelihood of cure of symptoms would have increased."

whilst placing specific reliance on Para-5(f) therein wherein it was stated by the RMB to the effect that the probable percentage to which the disablement could have reduced/treatment was 50% i.e. of the then disability percentage. The respondents however relied on Para-5(g) of Part-V of the opinion of the RMB to submit to the effect that the RMB had categorically opined to the effect that the reasons that the refusal of the applicant to undergo the operation was not reasonable as the likelihood of the cure of the symptoms would have increased if he had undergone surgery. The applicant in relation thereto placed reliance on the order dated 07.07.2022 of the AFT(RB), Lucknow in ***Amrendra Kumar, CHEA(R) (Retd.) Vs. UOI & Ors.***, in which case the applicant thereby had been assessed with a percentage of disablement of 20% for life for the disability of PIVD LV 4-5 which was reduced to 14% for life and despite he being unwilling for surgery he was held entitled to the grant of disability element of pension observing vide Para-7 to the effect:-

"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."

6. Reliance was also placed on behalf of the applicant on the order dated 12.05.2023 of this Tribunal in OA 205/2019 in **Ex LME Pramod Yadav vs. UOI & Ors.** in which case the applicant thereby had suffered the disability of ACL Tear Left Knee ICD N.S83.2, Z09.0 in relation to which the percentage of disablement had been assessed initially @20% which was however reduced to 10% for life because the applicant thereof had refused and given his unwillingness/ refusal to undergo treatment/surgery for ACL Tear Left Knee ICD N.S83.2, Z09.0 and the RMB had advised (at para 5(f) of page no. 05 of AFSMF-16) that his disability percentage could have been reduced by 50% if he had undergone the treatment/surgery for ACL Tear Left Knee ICD N.S83.2, Z09.0 in which case the applicant therein was held entitled to the grant of disability element of pension as it was observed to the effect that where the RMB proceedings had themselves expressed therein that the percentage of success of surgery was only 50%, the reduction of the percentage of disablement of that applicant from 20% to 10% by the Pension Authorities was wholly

erroneous. Reliance was also placed on behalf of the applicant on the order dated 19.07.2023 of this Tribunal in OA 1848/2021 in the case of ***Gp Capt Pravin Arora(Retd) vs. UOI & Ors.***, in which case the applicant thereof had suffered from ACL Tear Rt Knee(Old) with initial assessment of the percentage of disablement @20% for life which was held to be attributable to military service but had been reduced to 10% for life because of his having denied to undergo the surgery which refusal was held to be justified and the reduction percentage of disablement from 20% to 10% by the RMB was held to be erroneous. Reliance was also placed on behalf of the applicant on the order dated 19.09.2023 of this Tribunal in OA 739/2019 in the case of ***Hav Anil Kumar Katiyar (Retd) vs. UOI & Ors.***, in which case the applicant thereof had suffered from PIVD L4-L5 and the disability had been assessed to be aggravated and connected with military service due to stress and strain of military service which had been assessed with an initial percentage of disablement percentage of 20% for life which had been reduced to 10% for life with it having been opined by the RMB that in the event of treatment having been conducted for the performance of the surgery, the percentage of disablement could have been reduced by operation/ treatment to 50%, it was observed to the effect that vide letter no.

16036/RMB/IMB/DGAFMS/MA(Pension) dated 16.04.2019

addressed to all the services of the Armed Forces as issued by the Ministry of Defence, it had been stated to the effect:-

“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.”

and that vide order dated 19.09.2023 it had been categorically observed to the effect that the said letter itself indicates categorically to the effect that the refusal of an individual to undergo surgery for spinal disorders for e.g. PIVD stands to reason apparently as mentioned in the said letter itself that there are underlying complications and recurrence of symptoms subsequently to initial relief is also a probability because of early onset of osteoarthritis. The contents of the said letter are also categorically to the effect, directing the three Armed Forces that the refusal of an individual to undergo surgery for spinal disorders for e.g. PIVD stands to reason and should not become a reason to reduce the percentage of disability. It was also observed vide observations in Para-4 &5 thereof to the effect:-

“4. On behalf of the applicant, reliance is placed on the order dated 08.05.2019 of AFT(PB), New Delhi in OA 1272/2016 in the case of Ex Sgt Anil Kumar Vs. UOI & Ors., in which case the applicant thereof who

had sustained PCL Tear(RT) Knee had refused to undergo the surgery but was allowed the grant of disability element of pension. Reliance was also placed on behalf of the applicant on the order dated 23.01.2018 of the AFT(RB), Lucknow in OA 314/2017 in the case of Ex Sgt Ram Khelawan Vs. UOI & Ors., which relates to the case of an Armed Force Personnel who was suffering from the same disability which the applicant suffers herein i.e. PIVD L4-L5 wherein the percentage of disablement had been assessed @20% for life, which however had been reduced to 16%, in as much as that applicant had refused to undergo the surgical management/spine operation in relation to which, it was observed vide Para-7 and 8 thereof to the effect:-

"7. The Medical Board held before discharge originally assessed the disability of the applicant as 20% for life and aggravated by military service. The net disability assessment for grant of disability pension was reduced from 20% to 16% for life at a subsequent stage by the respondents on the grounds of refusing to take treatment i.e. undergo spinal operation.

8. Considering all aspects 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 refusal of the applicant to undergo spinal operation in our opinion is not a valid ground for reducing his disability percentage from 20 to 16% specially so when one considers the complications which are associated with spinal operation."

Apparently in view of the factum that the RMB itself vide observations in Para-5(f) of the RMB proceedings had stated to the effect that the probable percentage to which the disablement could be reduced by operation/ treatment was 50%, with it having been apparently only a probability of a cure of 50%, the applicant could not have been compelled to undergo the said surgery as also the spirit and contents of the letter of the respondents

themselves dated 16.04.2019 adverted to herein above.

5. The refusal thus of the applicant to undergo the surgery for his spinal ailment cannot be held to be unreasonable in view thereof, the OA is allowed and the disability of the applicant assessed @20% for life for the disability of PIVD L4-L5 sought to be reduced by the respondents to 10% for life, is set aside with the said disability being directed to be assessed with the percentage of disablement as actually @20% for life with effect from the date of discharge with rounding off to 50% for life, from the date of discharge, which in terms of the verdict of the Hon'ble Supreme Court in UOI & Ors. vs Ramavtar in Civil Appeal No. 418/2012, in relation to which the respondents were directed to issue the corrigendum PPO to the applicant within a period of three months from the date of this order and make a payment of the arrears in relation thereto, within a said period of time failing which the arrears would carry interest at the rate of 6% per annum."

In the case of OA 739/2019 in the case of *Hav Anil Kumar Katiyar(Retd)*(Supra), a submission was likewise made on behalf of the respondents during the hearing in the instant case that the RMB did not have the benefit of the letter dated 16.04.2019 in as much as the RMB proceedings had been conducted much before on 21.10.2016 with it also being sought to be submitted on behalf of the respondents to the effect that there is no time frame stipulated in the letter dated 16.04.2019 to show the period from which the contents of the said letter come into operation, which submission was not

accepted vide order dated 19.09.2023 with observations to the effect:-

“The said submission cannot be accepted in as much as the factum of a spinal disorder continues to exist and continues to remain the same, specifically in view of the factum that the RMB itself had opined the disability to be for life. In these circumstances the said submission cannot be accepted and is rejected.”

ANALYSIS

7. On a consideration thus submissions made on behalf of either side and the admitted factum of the RMB proceedings dated 03.08.2017 vide Para-5(f) in Part-V of the RMB categorically stating to the effect that the probable percentage of disablement could be reduced by operation/treatment was only 50% and the factum that the MoD itself vide letter no. 16036/RMB/IMB /DGAFMS/ MA (Pension) dated 16.04.2019 issued to all the services of the Armed Forces had itself categorically stated to the effect that there are underlying complications and recurrence of symptoms subsequently to initial relief is also a probability and thus 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 of disability, as held by us in OA 739/2019 in the case of **Hav Anil Kumar Katiyar(Retd)**(supra) and as held in OA 177/2022 by the AFT

(RB), Lucknow in *Amrendra Kumar, CHEA(R) (Retd.)*(supra), the refusal of the applicant to undergo surgery for the spinal disorder for PIVD stands to reason where the disability itself had been accepted by the RMB to be categorically attributable to service with an initial disablement percentage of 20%, the reduction of the percentage of disablement of 15-19% from 30% is held to be only arbitrary and erroneous.

CONCLUSION

8. The OA 1478/2019 is allowed. The impugned order no. AirHQ/99798/1/743361/03/18/DAV(DP/RMB)dated 13.08.2018 is set aside and the applicant is held entitled to the grant of the disability element of pension in relation to the disability of **PIVD L5-S1 M 51.1** assessed with a [✓]initial assessment of disablement of 30% for life which is attributable to service in terms of the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs Ramavtar* in Civil Appeal No. 418/2012 is directed to be broadbanded to 50% for life.

35. 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 and the amount of arrears shall be paid by the respondents, 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.

Pronounced in the open Court on the 8 day of February, 2024.

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

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/TS/