

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

**OA No. 1659/2019**

**WG CDR R. Rajesh (Retd.)**

**..... Applicant**

Versus

**Union of India & Ors.**

**..... Respondents**

**For Applicant**

**: Mr. Baljeet Singh, Advocate**

**For Respondents**

**: Ms. Satya Ranjan Swain, Sr. CGSP Counsel**

**CORAM:**

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

**ORDER**

1. Invoking the jurisdiction of this 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 are read as under: -

*“(a) To set aside the impugned letter No. Air HQ/99797/3934/Dis/O/DAV-1(B) dated 10.04.2019 passed by the respondents.*

*(b) To direct the respondents to grant disability element of pension @20% with effect from the date of retirement for life by treating the disability @ 20% and considering the same as attributable to or aggravated by the Air Force service.*

*(c) To direct the respondents to grant the benefit of rounding off of disability element of pension of the applicant @ 50% (20% to be rounded off to 50% with effect from date of retirement with all consequential benefits.*

*(d) To direct the respondents to pay the due arrears of disability pension with interest @12% p.a. with effect from the date of retirement till actual payment.*

*(e) To pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law.”*

### BRIEF FACTS

2. The applicant was commissioned in the Indian Air Force on 17.06.1995 and discharged on 31.03.2017 upon premature separation from service at own request. The applicant has rendered a total of 21 Years 09 months and 15 days of active service.

3. The RMB at the time of release vide AFMSF-16, dated 31.01.2017 has assessed the disability ID **Recurrent Dislocation (Rt.) Shoulder @ 15-19%** for life and recommended the disability as neither attributable to nor aggravated (NANA) by the AF service as the onset of the disability was in peace and the applicant denied to undergo treatment surgery. However, earlier the The RMB found the applicant fit to be released from service in medical classification A2G2 (Permanent) for ID Recurrent Dislocation (Rt.) Shoulder.

4. The initial claim of the applicant for grant of disability element of pension was rejected by the respondents vide letter dated 29.01.2018. The applicant thereafter preferred first appeal dated 16.05.2018 which was rejected by the respondents vide their letter dated 10.04.2019.

5. Aggrieved by this, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA.

#### **CONTENTIONS OF THE PARTIES**

6. The learned counsel for the applicant submitted that the onset of the condition occurred on July 28, 1991, during rigorous training at the National Defence Academy (NDA) in Khadakwasla, Pune. The medical board's rejection of his claim, based solely on the assertion that the disability was not connected to Air Force service and occurred at a peace location, was unsustainable and erroneous, particularly given that the disability was later classified at 20% but reduced to 15-19%, but not conceded as attributable to military service.

7. The learned counsel for the applicant submitted that he had refused to undergo corrective surgery as the probable reduction in the percentage of the disablement, post-surgery, would only be 10% (as specified in question 5(f) in the RMB vide AFMSF-16, dated 31.01.2017), thereby not resulting in the

complete recovery and which could also result in the worsening of the condition of the applicant.

8. The learned counsel for the applicant in support of his claim has placed reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh Vs. Union of India and Ors. [(2013) 7 SCC 316]***, which has been considered and taken note of by the Hon'ble Apex Court in many judgments, wherein the Hon'ble Supreme Court had considered the question with regard to grant of disability pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that ***an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions.*** The Apex Court further held that ***the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service.*** Referring to Rule 9 of the Entitlement Rules for Casualty Pensionary Awards, 1982, the learned counsel for the applicant submitted that

the applicant should have been given benefit of doubt and the disability should have been conceded as aggravated by service only.

9. The learned counsel for the applicant also placed reliance on the judgment of the Hon'ble Supreme Court in *UOI v. Rajbir Singh (Civil Appeal No. 2904/2011)* whereby it was held that the disability must be presumed to have been arisen in the course of service which must, in the absence of any reason recorded by the Medical Board, be presumed to have been attributable to or aggravated by military service. The learned counsel submitted that there is admittedly neither any note in the service records of respondents at the time of the applicant's entry into service nor have any reasons been recorded by the Medical Board to suggest that the disease which the applicant was found to be suffering from could not have been detected at the time of his entry into service., and *UOI and Other v. Ram Avatar (C.A. No. 418/2012 dated 10 December 2014)*, whereby the benefit of rounding off of the disability pension was granted.

10. The learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in *D.S. Nakara v. Union of India [AIR 1983 SC 130]* wherein it was held that the right to pension is a fundamental right which has to override any other provisions that are inconsistent or imposing unreasonable restrictions upon it. The learned counsel for the applicant also

placed reliance on the judgment of a Division Bench of the Punjab and Haryana High Court in the case of *Ex Naik Umed Singh vs. Union of India* (C.W.P. No. 7277/2013 decided on 14.05.2014) wherein the High Court of Punjab and Haryana has upheld the verdict of the Dharamvir Singh Case (supra).

11. *Per contra*, the learned counsel for the respondents submitted that the applicant was advised surgery for his disability as per the opinion of the Ortho Surgeon, for which he was unwilling on several occasions and therefore the percentage of disability was reduced from 20 % to 15-19 %.

12. The learned counsel for the respondents further submitted that as per Rule 153 of Pension Regulations for IAF, 1961, (Part-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*" and hence the applicant should be denied the relief of disability pension as the percentage of his disability is less than 20% i.e., 15-19 % and is assessed as NANA and does not meet the twin conditions of Rule 153 of Pension Regulations for IAF, 1961 (Part-1).

## ANALYSIS

13. We have heard the learned counsel for the parties at length and have gone through the records produced before us. It is an undisputed fact that the onset of the disability suffered by the applicant was on 28.07.1991 at NDA, Khadakwasla during boxing training before the applicant was commissioned in the Indian Air Force on 17.06.1995. The initial assessment of the percentage of the disablement of the applicant was 20% which was then reduced to 15-19% on the ground that the applicant was unwilling to undergo the orthopedic surgery. The issues that are required to be considered in the matter at hand are of two-fold:

- a) Whether or not the disability suffered by the applicant is attributable to or aggravated by the military service?
- b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

14. The applicant initially suffered the injury/disability of **Recurrent Shoulder Dislocation (Rt)** during the boxing training at NDA, Khadakwasla, Pune. The applicant suffered with the same disability again on 02.01.1996 when he was on annual leave. Thereafter, in the year 2009, the applicant again was detected with the same disability and was placed in LMC A3 (T12).

15. The Release Medical Board vide AFMSF-16, dated 31.01.2017 at the time of release of the applicant has assessed the disability of the applicant as Neither Attributable to Nor Aggravated (NANA) by the Military Service on the following ground:

*“Date of injury is 28.07.1991 at Khadakwasla, Pune. The injury report and COI for the same is not found in documents. Individual had repeated episodes thereafter officer was advised surgery for his disability on several occasions for which he was unwilling as per opinion of Ortho surgeon dated 29 Jan 1996, 09 March 1996, 15 July 1998, 09 December 2011, 11 December 2012. Hence, the disability is neither attributable to nor aggravated by the military service.”*

16. The RMB in its initial assessment of the degree of disablement of the applicant had assessed the disability as aggravated at @ 20% for life and then later assessed it as NANA and reduced the disability percentagr from 20% to 15-19% for life merely on the ground that the applicant was unwilling to undergo the surgery. The RMB in para 5(e) and (f) points out the degree of disablement that could be reduced had the applicant undergone the surgery. Para 5 (e) and (f) of the RMB dated 31.01.2017 have been reproduced as follows: -

“5 (a) ...  
(b) ...

(c) ...

(d) ...

(e) Does the medical board consider it probable that the operation/treatment would have cured the disability or reduced its percentage? Yes

(f) If the reply to (e) is in affirmative, what is the probable percentage to which the disablement could be reduced its percentage? 10% (Ten Percent)

(g) ...”

17. In the case of *Secretary, Government of India & Ors. v. Dharambir Singh*, Civil appeal No.4981/2012 decided by the Hon’ble Supreme Court of India on 20.09.2019 the issue of grant of disability pension or injury sustained have been considered by the Hon’ble Supreme Court in detail and in Para 36 of the said judgment, the final conclusion have been culled out in the following manner: -

“36. We find that summing up of the following guiding factors by the Tribunal in *Jagtar Singh v. Union of India & Ors.* and approved in *Sukhvant Singh* and in *Vijay Kumar* do not warrant any change or modification and the claim of disability pension is required to be dealt with accordingly: -

“(a) The mere fact of a person being on 'duty' or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable.

*This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.*

*(b) If the injury suffered by the member of the Armed Force is the result of an act alien to the sphere of military service or in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to our mind would be permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.*

*(c) The act, omission or commission which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.*

*(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a Member of Force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the Armed Force must have some casual connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.*

*(e) The hazards of Army service cannot be stretched to the extent of unlawful and entirely un-connected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn*

*between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex-facie in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far as it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rules 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behavior.*

*(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service."*

18. The Hon'ble Supreme Court holds that there has to be a relevant and reasonable and causal connection, however remote between the incident resulting in such disability, death and military service for its attributability. The injury sustained or the consequent disability must relate to military service in some manner or the other or the act must fall as a matter of necessity from military service.

19. In the present case, the applicant for the first time sustained the injury **Recurrent Shoulder Dislocation (Rt)** on 28.07.1991 during boxing training <sup>at NDA</sup> which is an organized sport under the military supervision and control. Since the incident which resulted in the disability of the applicant took place after joining the NDA and undergoing military training and the same is held to be attributable to military service in view of the judgment of the Hon'ble Supreme Court in the case of *Secretary, Government of India & Ors. v. Dharambir Singh (Supra)*.

20. The respondents in their RMB have brought on record that the Injury Report and the Court of Inquiry (COI) related to the incident that led to the onset of the recurring shoulder dislocation disability of the applicant could not be found. However, the respondents in their Counter Affidavit filed on 04.12.2020 explicitly mentions that the onset of the applicant's ID Recurrent Shoulder Dislocation (Rt) was on 28.07.1991 at NDA, Khadakwasla during boxing training. This essential assertion by the respondents in the absence of the Injury report and the COI is enough to establish that the applicant has sustained the injury during his training at the National Defence Academy ~~and~~ whilst he was undergoing military training and hence the same is held to be attributable to the military service.

21. The contention of the respondents that the applicant had denied to undergo the surgery and thereby reducing the percentage of his disablement from 20% to 15-19% is purely arbitrary as the RMB in para 5(f) specifically provides that the operation/treatment could only reduce the percentage by up to 10%, which would not completely cure the disability of the applicant.

22. Apparently thus, in the circumstances the reduction of the percentage of disablement of the disability of the applicant from 20% to 15-19% cannot be accepted as being reasonable, correct or in the interest of justice as the disability would not cease to exist even if the applicant had undergone the surgery. It is also pertinent to keep in mind that any surgical intervention comes up with its own set of risks that might lead to further complications.

### CONCLUSION

23. In view of the above analysis, the disability of the applicant is held attributable to military service and the percentage of disability is held to be 20% which is directed to be rounded off and broad banded to 50% for life with effect from date of discharge with all consequential benefits in terms of the verdict of the Apex Court in *Union of India v. Ram Avtar* and the respondents are directed to issue the corrigendum PPO. The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment. The OA is thus, disposed of.

24. There is no order as to costs.

25. MA, if any, stands disposed.

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

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

/PRGx/