

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

153.

OA 1694/2017

Ex Capt Sonika Chhetri

.....

Applicant

Versus

Union of India & Ors.

.....

Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Arvind Kumar, Advocate

CORAM

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

ORDER
18.03.2024

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA praying to direct the respondents to accept the disabilities of the applicant as attributable to/aggravated by military service and grant disability element of pension @40% rounded off to 50% with effect from the date of resignation of the applicant; along with all consequential benefits.

2. The applicant NR-22400M Captain Sonika Chhetri was commissioned in the Military Nursing Service on 07.08.2010 and resigned from service on 10.10.2016 after completing 06 years and 01 month of service. At the time of resignation from service she

was placed in low medical category **A2(P)** by the Release Medical Board for disabilities viz. (i)**Proximal Humerus Frature (RT) (OPTD)** and (ii) **Olecranon Fracture (RT) (OPTD)**.

3. The Release Medical Board dated 20.09.2016 as per the opinion of the medical board opined the disability as attributable to but not aggravated by and not connected with service, as under:-

1. Causal Relationship of the Disability with Service conditions or otherwise.					
ID	Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not Connected with service (Y/N)	Reason/Cause/Specific condition and period in service
01	PROXIMAL HUMERUS FRACTURE (RT) (OPTD) S 42.2	YES	NO	NO	Injury sustained while indl on Military Duty Ref IAFY-2006 (Injury Report) dt 28 Apr 2016.
02	OLECRANON FRACTURE (RT) (OPTD) S 52.2	YES	NO	NO	
Note. A disability "Not connected with service" would be neither Attributable nor Aggravated by service (This is in accordance with instructions contained in "Guide in medical officers (Military Pension-2002)					

4. The percentage of disablement of the applicant as per the said RMB dated 20.09.2016 put forth the net assessment qualifying for disability @44% rounded off to 40% for life, as per the clause-6 thereof to the effect:-

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%.				
Disability (As Numbered in Question 1 Part IV)	Percentage of Disablement with duration	Composite Assessment for all disabilities With duration (Max 10% with duration)	Disability Qualifying For disability Pension with duration	Net assessment Qualifying for disability Pension (Max 100% With duration)

(a) PROXIMAL HUMEUS FRACTURE (RT) (OPTD) S 42.2.	20% for life	44% Rounded off 40% (Forty Percent) For life	20% for life	44% Round Off 40% (Forty Percent) For life
(b) LOLECRANON FRACTURE (RT) (OPTD) S 52.2	30% for life		30% for life	

5. Placing reliance on the judgments of the Hon'ble Supreme Court on the ***Dharamvir Singh v. UOI & Ors*** [2013 (7) SCC 36], Civil Appeal No 418/2012 in case of ***UOI Vs Ramavtar***, Learned Counsel for applicant argues that no note of any disability was recorded in the service documents of the applicant at the time of the entry into the service, and that she served in the military service at various places in different environmental and service conditions in her service, thereby, any disability at the time of service is deemed to be attributable to or aggravated by military service and the applicant is also entitled to get his disability pension to be round off 40% to 50%.

6. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Regulation 81 of Pension Regulations for the Army, 2008 Part-I (PRA) the disability pension may be granted to service personnel invalided out of service on account of a disability which is either attributable to or aggravated by Military Service and

when the disability is assessed at 20% or more. A low medical category officer who retires on superannuation or on completion of tenure can also be granted disability pension under the provision of Regulation 37 of PRA, if he fulfills the twin eligibility conditions as stated except that the percentage of disability should be 20% or more.

7. Relying on the aforesaid provision, Learned Counsel for respondents further submits that as per Pension Regulation for the Army 2008, Part-I an officer proceeding on voluntary /premature retirement is not eligible for disability pension even if she otherwise fulfills the twin eligibility conditions for the same as mention above.

8. It is pertinent to note that the onset of disability qua the applicant is in the year 2016, when the applicant was posted in Base Hospital Barrackpore, which is a peace station and even if so it is clearly recorded by the competent medical authorities in the RMB that the disability is 'attributable to service'.

9. As far as the issue of grant of disability pension to premature retirees is concerned, the same has been settled by this Tribunal in **O.A. No. 336 of 2011 Maj (Retd.)**

Rajesh Kumar Bhardwaj v. Union of India & Ors.,

thereby, making it clear that the applicant has been released from service in the low medical category on account of medical disease/disability, even if on voluntary request for premature retirement, yet the disability is held to be attributable to service, as it occurred while on duty i.e when coming back from Sainik Sammelan.

10. 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 disabilities (i) **PROXIMAL HUMERUS FRACTURE (RT) (OPTD) @20%** and (ii) **OLECRANON FRATURE (RT) (OPTD) @30%**, net assessment qualifying for disability @44% with composite assessment of 40% for life rounded off to 50% with effect from the date of resignation (10.10.2016) of the applicant in terms of the verdict dated 10.12.2014 of the Hon'ble Supreme Court in the case of ***Union of India Vs. Ram Avtar*** (Civil Appeal No. 418/2012).

11. 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.

12. Consequently, the O.A. 1694/2017 is allowed.

13. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/jyoti/