

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

K..

OA 1887/2019

EX CHEA(P) Ajay Singh

.....

Applicant

Versus

Union of India & Ors.

.....

Respondents

For Applicant : Mr. Ved Prakash, 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  
29.02.2024

Vide our detailed order of even date, we have allowed the main OA No.1887/2019. 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

Invoking the jurisdiction of this Tribunal under Section 14 of The Armed Forces Tribunal Act, 2007, the instant OA has been filed with the following prayers :-

- (a) Quash the impugned letter No. PEN/600/D/LRDOI:01/2018/181923N dated 13.12.2017
- (b) Direct the respondents to grant disability element of pension to the applicant duly rounded off to 50% w.e.f his date of discharge.
- (c) Direct respondents to pay the due arrears of disability pension/invalid pension with interest @12% p.a. from the date of retirement with all the consequential benefits.
- (d) To grant an interest @ 12% on delayed payment of the disability pension and

**BRIEF FACTS**

2. The factual matrix of the case is that the applicant was enrolled in the Indian Navy on 02.08.2001 and was discharged from service on 31.01.2018 on expiry of engagement after rendering total service of 16 years. At the time of discharge he was placed in low medical category

S3A2(A) by the Release Medical Board for disabilities viz.

(i) "TEAR MEDIAL MENISCUS (RT) (ICD No. S83.2)

3. The Release Medical Board dated 27.07.2017 as per the opinion of the medical board opined, as under:-

"Disability (a)

In the absence of IAFY-2006 no opinion can be given by med bd. Attributability/Aggravation be decided by pension sanctioning authority vide (para-7(c) of O/O DGAFMS letter No. 16050/DGAFMS/ MA (pens) dated 22 Nov, 2005.

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	TEAR MEDIAL MENISCUS (RT) (ICD No. S 83.2)	YES	No	No	ATTRIBUTABLE BY MILITARY SERVICE VIDE AN APPROVED COPY OF INJURY REPORT (IAFY 2006) DATED 27 Aug, 2014
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)					

Thus the attributability/aggravation of the ID (i) was not assessed due to the lack of injury report.

4. The percentage of disablement of the applicant as per the said RMB dated 27.07.2017 put forth the net assessment qualifying for disability less than 20% for life, as per the clause-5 thereof to the effect:-

5. 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) TEAR MEDIAL MENISCUS (RT) (ICD No. S 83.2)	20%	20%	14% (fourteen percent) (30% reduced due to unwillingness for surgery)	14% (fourteen Percent Lifelong & final)

5. Para 5 (c),(e) and (f) of the medical documents stated the reason for reduction of disability from 20% to 14% are reproduced as under :-

(c) Has the individual refused to undergo operation/treatment? If so, individual's reasons will be recorded. <b>YES, UNWILLING FOR SURGERY DUE TO DOMESTIC REASON UNWILLINGLES CERTIFICATE ATTACHED.</b>
(e) Does the Medical Board consider it probable that the operation/treatment would have cured the disability or reduced its percentage? <b>YES</b>
(f) If the reply to (e) is in affirmative, what is the probable percentage to which the disablement could be reduced by operation/treatment? <b>YES, 30% (Thirty percent)</b>

### CONTENTIONS OF THE PARTIES

6. Ld. Counsel for the applicant submits that when he joined the Indian Navy, he had been found medically fit and no note of any disability was made in respect of any disease including the present disabilities by the Medical Board and that the Pension Regulations and Entitlements Rules stipulate that if the Armed Forces Personnel at the time of release from service is in a lower medical category than that in which he was recruited, he will be entitled to disability pension and the said disability will be presumed to be **"Attributable"** to military service irrespective of the place of posting.

7. Learned Counsel for the applicant further submits that his disability of **Tear Medial Meniscus (Rt) Knee ICD No. S83.2** commenced while he was serving in INS Kalinga and

the applicant was downgraded to Medical Category S3A2(A) Permanently.

8. Per Contra, Learned Counsel for the respondents submits through the counter affidavit that the applicant had given his unwillingness / refusal to undergo treatment / surgery for **Tear Medial Meniscus (Rt) Knee ICD No. S83.2**, and the Release Medical Board has advised (at para 5(c) & (f) of Part IV of AFSMF-16) that his disability percentage could have been reduced by 30% if the applicant had undergone the treatment/surgery. Further the learned counsel submits that since the surgery was considered safe by the medical authorities as stated at Para 5 (g) of the RMB, the applicant should have undergone the surgery; thereby reducing the ailment by 30%. Therefore, the onus of responsibility lies on the applicant himself. The respondents further submit that since the applicant's disability was assessed less than 20% as such and considered as NANA.

#### ANALYSIS

9. On a consideration of the submissions made on behalf of either side, it is essential to observe that in the instant case vide para-5(f) Part V in AFMSF, it had been specifically stated that the probable percentage to which the disablement could

have been reduced by operation was 30% which is reflected to the effect:-

*"If the reply to (e) is in affirmative, what is the probable percentage to which the disablement could be reduced by operation/treatment? It was stated in answer YES "30%".*

10. It is also pertinent to refer to Regulation 104 of Navy Pension Regulation, 1964 which provides to the effect:-

*"14. The respondents submit that as per Regulation 104 of Navy Pension Regulation, 1964, it is provided to the effect:-*

*(a) if the refusal to undergo treatment or an operation is reasonable, the full disability pension normally admissible may be granted.*

*(b) if the refusal to undergo treatment or an operation is unreasonable.*

*(i) If the pension sanctioning authority, in consultation with Medical Advisor (Pension) where necessary decides that an operation or medical treatment will cure the disability.*

*The disability pension shall be withheld but the normal service pension or gratuity, if any, admissible under these regulations, or the pension or gratuity, if any admissible under regulation 110 may be granted, and the disability element or pension shall be restricted to that appropriate to the lower percentage of disablement.*

*(ii) If the pension sanctioning authority, in consultation with the (Medical Advisor Pension), where necessary, decides that an operation or medical treatment will reduce the disability to a lower percentage.*

*If that lower percentage is less than twenty per cent, the normal, service pension or gratuity, if any, admissible under these regulations, or the pension or gratuity, if any, admissible under regulation 110 may be granted."*

11. Thus in the light of the Regulation of Navy Pension Regulation, 1964 quoted above, refusal to undergo medical treatment by the applicant herein thus has to be held to be reasonable as it is apparent that in the RMB Proceedings itself it had been expressed therein that the percentage of success after surgery was only 30%, and the reduction of the percentage of disablement of the applicant from 20% to 14% just because the applicant was unwilling to undergo surgery, for a disablement which was well attributable to service, is wholly erroneous.

### CONCLUSION

12. 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 **"Tear Medial Meniscus (Rt) Knee ICD No. S83.2 @ 20% rounded off to 50% with effect from the date of discharge 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).**

13. 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.

14. With the aforesaid directions, the present OA 1887/2019 is allowed.

Pronounced in the open Court on the 21<sup>st</sup> day of February. 2024.

(JUSTICE RAJENDRA MENON)  
CHAIRPERSON

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

Ps  
OA 1887/2019