

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

1.

**OA 1947/2022**

**Ex POME Bikas Kumar Shah** ... Applicant

**Versus**

**Union of India & Ors.** ... Respondents

**For Applicant** : Shri Ved Prakash, Advocate

**For Respondents** : Shri S.S. Sinha, Advocate

**CORAM :**

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

**O R D E R**  
**04.01.2024**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

*"(a) Quash the Impugned Order No. PEN/600/D/LRDOI:01/2022/216122-N dated 06.01.2022.*

*(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.*

*© Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a from the date of retirement with all the consequential benefits.*

*(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."*

### **BRIEF FACTS**

2. The applicant, having been found medically and physically fit, was enrolled in the Indian Navy on 30.01.2007 and discharged on 31.01.2022 after rendering 15 years and 01 day of qualifying service. The applicant was diagnosed with "Partial Tear ACL (Rt) Knee" whilst he was serving onboard INS Sukanya, on 23.04.2018. The RMB assessed the disability of the applicant to be 30% for life and considered the disability of the applicant as attributable to service. However, as the applicant refused to undergo the surgery, the net assessment qualifying for disability pension was reduced from 30% to 15% for life.

3. On adjudication, the applicant's claim for the grant of disability element of pension was rejected by the competent authority and the same was intimated to the applicant vide NAVPEN letter No. PEN/600/D/LRDO I:01/2022/216122-N dated 06.01.2022 by stating that the disability of the

applicant is at 15% (less than 20%). The applicant thereafter sent a Legal Notice-cum-Representation dated 04.02.2022 seeking the relief but no reply has been received from the respondents till date. Aggrieved by the response from the respondents, the applicant has filed the instant O.A. and thus, in the interest of justice, in terms of Section 21(2) (b) of the AFT Act, 2007, we take up the same for consideration.

### **CONTENTIONS OF THE PARTIES**

4. The learned counsel for the applicant submitted that the Release Medical Board has assessed the disability of the applicant at 30% for life and opined the disability of the applicant as attributable to service, but the net assessment qualifying for disability pension was reduced from 30% to 15% for life in view of the applicant's unwillingness for surgery.

5. The learned counsel for the applicant further submitted that the applicant sustained the said injury whilst he was serving onboard INS Sukanya, i.e. a field posting and continued to be on duty till his discharge from the service.

6. The learned counsel placed reliance on OA No. 238/2014 titled as **Sukhbir Singh Vs. Union of India**, and submitted that in this case the applicant therein was

having disability less than 20% which was rounded off to 50% by the Tribunal and the applicant was granted disability element of pension. The learned counsel for the applicant further placed reliance on OA No. 1841/2019 titled as **Ex MECH 3 Shinu Joseph Vs. Union of India**, submitting that the applicant's case is squarely covered by this order as the disability of the applicant therein was held attributable to service but his disability was reduced from 20% to 14% due to unwillingness from surgery and the respondents granted the disability element of pension to the applicant on his appeal. The learned counsel for the applicant placed specific reliance on the order passed by AFT, Principal Bench, New Delhi on 12.05.2023 in OA 205/2019 titled as **Ex LME Pramod Yadav vs. Union of India & Ors.**

7. The learned counsel for the applicant further relied upon Para 5 of the Entitlement Rules for Casualty Pensionary Awards. 1982, which reads as under:

***“The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:***

***Prior to and during service***

***(a) A member is 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.***

***(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health, which has taken place, is due to service."***

8. Per contra, the learned counsel for the respondents submits that the applicant sustained the said injury to his right knee on 27.04.2018 due to fall from the two wheeler vehicle. The learned counsel for the respondents further submitted that the Release Medical Board had reduced the percentage of applicant's disability "Partial Tear ACL (RT) Knee, from 30% to 15% (less than 20%) due to his unwillingness for surgery and thus, the applicant becomes ineligible for disability pension in accordance with Regulation 105-B of Navy Pension Regulation, 1964, as his disability qualifying for disability pension percentage which could qualify him for disability pension was reduced to 15% (less than 20%) due to his unwillingness to undergo surgery by the Release Medical Board.

9. The learned counsel for the respondents controverted the submissions made on behalf of the applicant and submitted that although the applicant's disability has been opined as 'attributable to service' but as the same has been assessed @15% (less than 20%), the applicant is not entitled to the disability element of pension and, therefore, the OA deserves to be dismissed. The learned counsel justified the reduction of percentage from 30% to 15% on the ground that the applicant refused to undergo surgery related to the disability, however, he was placed in low medical category and post-surgery the disability of the applicant could have improved. Hence, the learned counsel prayed for dismissal of the OA.

10. The learned counsel for the respondents placed reliance on the judgment dated 11.12.2019 of the Hon'ble Supreme Court in ***Union of India &Ors. Vs. Wing Commander S.P. Rathore [Civil Appeal No. 10870/2018]***, submitting that in the said case, it was held that the disability element is not admissible if the disability is less than 20%, and that the question of rounding-off would not apply if the

disability is less than 20% and if a person is not entitled to the disability pension, there would be no question of rounding off.

### **ANALYSIS**

11. We have heard the learned counsel for the parties and have gone through the records produced before us. In this case, it is an undisputed fact that the applicant had sustained the injury to his right knee diagnosed as Partial Tear ACL (Rt) Knee whilst he was serving onboard INS Sukanya, on 23.04.2018 for which he was placed in low medical category. It is also not in dispute that the applicant was advised surgery but the applicant refused to undergo the said treatment. The disability of the applicant was considered to be attributable to military service as is evident from the Release Medical Board proceedings dated 01.09.2021, available on record. The RMB has initially assessed the disability @30% for life, however, on account of the refusal to undergo requisite treatment/surgery, the percentage of his disablement was reduced to 15% for life and that is the reason why the disability pension was denied to the applicant.

12. The only question for our consideration, in view of the aforesaid facts is, as whether the applicant is still entitled to the benefit of disability pension?

13. We have gone through the RMB proceedings and on going through the same, it is evident that the Medical Board has opined that the success rate of the surgery suggested is approximately 50%. The relevant opinion of the RMB is reproduced herein under:-

***“(f) If the reply to (e) is in affirmative, what is the probable percentage to which the disease/disablement could be reduced by operative treatment? 50% (Approx).”***

From the record, it is revealed that though in the first instance the disability of the applicant was initially assessed @30% but after the applicant refused to undergo the surgery suggested, it was reduced to 15%. There is no denial of the fact that the applicant suffered the disability which was initially assessed @30% for life and attributable to military service. From the RMB, it is clear that the Medical Board opined the probability to which the disease/disablement could be reduced by surgery/treatment is 50% (approx) and it suggests that the advising doctors were themselves not 100% sure about the

success of the surgery, therefore, it could be the probable reason that the applicant showed his unwillingness to undergo the surgery for his right knee. Therefore, the applicant's unwillingness for the surgery can be considered as a valid reason as improvement of the injury post-surgery was reported as 50% (approx) only. Therefore in our view, the RMB committed an error in decreasing the percentage of disablement from 30% to 15%. Furthermore, on a perusal of the documents available on record, we find that the Medical Board has nowhere clearly mentioned that the applicant's refusal to undergo the suggested surgery/treatment is unreasonable and hence the applicant's disability is reduced from 30% to 15%. In our considered view the reduction of disability from 30% to 15% was not justified and the applicant's disability percentage ought to be considered 30%.

### **CONCLUSION**

15. Therefore, in view of our analysis, the OA is allowed and the respondents are directed to grant the benefit of disability element of pension to the applicant for the disability Partial ACL Tear RT knee which was conceded as attributable to military service by the RMB @30% for life, which is directed

to be rounded off to 50% for life with effect from the date of retirement in terms of judicial pronouncement of the Hon'ble Apex Court in ***Union of India Versus Ram Avtar (Civil Appeal No. 418/2012)*** decided on 10.12.2014.

16. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of copy of this order, failing which, the applicant shall be entitled to interest @6% per annum till the date of payment.

17. There is no order as to costs.

**[JUSTICE RAJENDRA MENON]  
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)**

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