

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

O.A. No. 400 of 2019

In the matter of :

Ex ERA-2 Suman Kumar Chaudhary ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Ved Prakash, Advocate

For Respondents : Shri Arvind Patel, Advocate

CORAM :

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

ORDER

Invoking the jurisdiction of the 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 read as under :

- "(a) Quash impugned letter No. PEN/600/D/123002-A dated 13.12.2017.***
- (b) Direct respondents to grant the disability element of pension to the applicant duly***

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*rounded off to 50% w.e.f the date of discharge
i.e. 01.02.2018.*

*(c) Direct the respondents to pay the due arrears
of disability 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 cases along with the cost
of the application in favor of the applicant
and against the respondents."*

2. The applicant was enrolled in the Indian Navy on 23.01.1998 and was discharged on 31.01.2018 on expiry of engagement after rendering total service of 20 years. At the time of discharge he was placed in low medical category S3A2(A) PMT by the Release Medical Board for disability viz. **'ACL Tear RT KNEE ICD NO. S 83.5'**.

3. The Release Medical Board dated 30.06.2017 as per the opinion of the Medical Board opined the disability as

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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	ACL TEAR RIGHT KNEE	YES	NO	NO	YES, VIDE APPROVED COPY OF INJURY REPORT DATED 19 MARCH 2013
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)					

The percentage of disablement of the applicant as per the said RMB dated 30.06.2017 put forth the net assessment qualifying for disability @20% 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	Composite Assessment for All disabilities with duration (Max 100%)	Disability Qualifying for pension with duration	Net assessment Qualifying for disability pension (Max 100% with duration)
ACL TEAR RIGHT KNEE	20% (Twenty percent)	20% (Twenty Percent) FOR LIFE	ACL TEAR LEFT KNEE	14% (fourteen percent) Reduced by 30 percent

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				due to unwillingness doe surgery
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4. The claim for the grant of disability pension was rejected by the competent authority vide NAVPEN letter No. PEN/600/D/123002A dated 13.12.2017 with an advice that the applicant may prefer an appeal against the rejection within six months from the date of receipt of the rejection letter.

5. The applicant then preferred first appeal dated 17.08.2018 which was forwarded to PDPA, New Delhi vide NAVPEN letter No. PEN/600/D/1ST Appeal/123002 dated 24.04.2019 the reply to which was still awaited at the time of filing of the present OA. We, therefore, take up the present OA for consideration, in the interest of justice, in accordance with Section 21(1) of the AFT Act.

CONTENTIONS OF THE PARTIES

6. The learned counsel for the applicant submits that when the applicant 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 disability by the Medical Board.

7. The learned counsel for the applicant submits that in as much as the disability ACL Tear Right Knee is concerned, the applicant suffered from the said injury whilst trying to move from the ship to a boat when his ship was at anchorage and in the process of this movement, he got injured and the medical authority considered the injury as '**Attributable**' to service and assessed it as 20% for life.

8. The learned counsel for the applicant submits that the applicant's disability was assessed @20% for life, however at a later stage without informing on re-assessing his disability, the percentage for qualifying disability pension was reduced to 14% by the pension sanctioning Authority. The applicant submits that the Release Medical Board is a body of medical specialists/ and the decision of the Release Medical Board cannot be overlooked by the Naval Pension Office. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in the case of **Ex. Sapper Mohinder Singh Vs. Union of**

India in Civil Appeal No. 164 of 1993, wherein it has been observed to the effect:-

“From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very arrow compass viz, whether the Chief Controller off Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension in regard to the percentage of the disability pension or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher Medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”

9. The learned counsel for the applicant submits that primacy has to be given to medical board proceedings and the refutation of a medical opinion can only be by another more competent medical opinion and the disability percentage cannot

be reduced to 14% on the directions of administrative authorities.

10. The learned counsel for the applicant submits that primacy has to be given to medical board proceedings and the refutation of a medical opinion can only be by another more competent medical opinion and the disability percentage cannot be reduced to 14% on the directions of administrative authorities.

11. The learned counsel for the applicant further submits that his disability of ACL TEAR RT KNEE commenced while he was posted at Mumbai in April, 2012, and the applicant was advised surgery but when the applicant asked what were the chances of improvement of his disability, no satisfactory answer was given to him. He submits that he was told that the surgery is complicated and it may or may not improve his disability and the surgery involves a high degree of risk. The applicant submits in these circumstances when the advising doctors were themselves not very sure about the success of surgery and a danger was involved in the procedure, the applicant was left

with no option other than giving his unwillingness to perform the surgery.

12. The learned counsel for the applicant submits that in as much as para-5 (f) of Part V in AFMSF 16 in the Release Medical Board proceedings specifically asked as to what was the probable percentage to which the disablement could be reduced by operation, to which the answer given by the Release Medical Board was 30%, and the Release Medical Board assessed that even after the operation/treatment, the disability percentage would be reduced but no specific percentage was stated hence, Release Medical Board could not have re-assessed the disability of the applicant assessed @20% by reducing the same to 14%.

13. The learned counsel for the applicant submits that the para 5(h) of part V in AFMSF 16 in the Release Medical Board proceedings specifically asked 'Does the medical board consider the individual's refusal to submit to operation / treatment reasonable?', to which the Release Medical Board had found the unwillingness of the applicant reasonable stating to the effect:-

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“(h) 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. OPERATION WOULD HAVE REDUCED THE PERCENTAGE OF DISABILITY.”

14. *Per Contra*, the learned counsel for the respondents submits through their counter affidavit that the applicant had given his unwillingness/refusal to undergo treatment/surgery for ACL TEAR KNEE (RT), and the Release Medical Board has advised that his disability percentage could have been reduced by 30% if the applicant had undergone the treatment/surgery.

15. The learned counsel for the respondents submitted that since the percentage of disability of the applicant fell below 20% (i.e. 11-14%) he was not entitled for disability pension. The learned counsel for the respondents also submit that the broad-banding of the disability pension is also not applicable in this case.

16. The learned counsel for the respondents submits that as per Regulation 104 of the Navy Pension Regulations, 1964, it is provided to the effect :-

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“(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.”

The respondents further submit that the applicant's disability was assessed as less than 20%(i.e.14%) and the applicant's claim for grant of disability pension was rightly rejected by the competent Authority. Regulation 104 of the Navy Pension Regulations, 1964 is to the effect:-

**APPENDIX VII
(See Regulation 104)**

“Criteria for deciding whether an individual's refusal to undergo medical

treatment or an operation for his disability attributable to or aggravated by military service, is reasonable or unreasonable.

1. Refusal to undergo medical treatment or an operation shall be held to be reasonable.

(a) When, in the opinion of the medical authorities, it is improbable that such treatment or operation would cure the disability or reduce its percentage or where such treatment or operation may be severe and dangerous to life; or,

(b) When, in the opinion of the Commanding Officer, Ship/Establishment to undergo the operation or the treatment prescribed, is opposed to religious or caste prejudices of a valid nature and the refusal is the bona fide outcome of such prejudices.

1. Refusal to undergo medical treatment or an operation shall be held to be unreasonable:

(a) When, in the opinion of the medical authorities, it is due to malingering; or,

(b) When, in the opinion of the Commanding Officer, Ship/Establishment, it is due to a desire to avoid further service or to obtain or retain a pension or to receive an enhanced pension.

2. If in the opinion of the Commanding Officer, Ship/Establishment, the individual, has grounds not covered by the above paragraphs for refusing medical or,"

ANALYSIS

17. On a consideration of the submissions made on behalf of either side, it is essential to observe that in as much as in the instant case, the applicant suffered from the injury 'ACL tear Rt knee' assessed @20% for life which was reduced by the medical authority to 14% due to the applicant giving unwillingness for surgery. The Injury report dated 09.07.2012 held the injury of the applicant as attributable to military service. Vide para-5(f) Part V in AFMSF, it had been specifically stated that the probable percentage to which the disablement could be reduced by operation was 30% and in response to Para-5(h) of Part V Which in AFMSF-16 in the Release Medical Board proceedings which specifically asked, "Does the medical board consider individual's refusal to submit to operation / treatment reasonable?, give reasons in support of the opinion specifying the operations/ treatment reasonable, it was stated, **"Operation would have reduced the percentage of disability"** and in terms of Appendix VII of Indian Navy Pension Regulations 1964, the refusal to undergo

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medical treatment by the applicant herein 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% by the medical board was wholly unreasonable, especially in the light of the fact that 30% chances of success of surgery is considered a very low success rate.

CONCLUSION

18. The prayer made by the applicant in the present OA is thus allowed and the respondents are directed to grant the disability of element of pension to the applicant in relation to the disability "ACL TEAR RT KNEE" which was attributable to military service @ 20% rounded off to 50% for life with effect from the date of discharge of the applicant t 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)***.

19. 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.

20. There is no order as to costs.

Pronounced in the open Court on this 18th day of July,
2024.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

pr/ng/