

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 804/2017

Ex MCHA-II Narender Singh ... **Applicant**

Versus

Union of India and Ors. ... **Respondents**

For Applicant : Mr. Praveen Kumar, Advocate

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, 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
praying for the following prayers :-

***(a) Quash and set aside the impugned letters
dated 29 Mar 2017***

***(b) Direct Respondents to grant disability pension
@ 20% rounded off the same to 50% for life as
recommended by RMB to the applicant with effect
from 0 Nov 2016 i.e. Date of discharge from service
with interest @ 12% p.a. till final payment is made.***

(c) Any other relief which the Hon'ble tribunal may deem fit and proper in the fact and circumstances of the case.

BRIEF FACTS

2. The factual matrix of the case is that the applicant was enrolled in the Indian Navy on 01.08.2001 and was discharged from service on 31.10.2016 on expiry of engagement after rendering a total service of 15 years and 3 months. At the time of his retirement he was brought before the Release Medical Board on 24.05.2016, which assessed his disability viz. **LBA changed to PIVD L5-51 @ 20% for life - Aggravated by service**, But net assessment qualifying for pension was recorded @ 11-14% for life stating that the percentage reduction was due to applicant's unwillingness for surgery.

3. The initial claim for grant of disability pension was rejected by the Competent Authority vide PEN/600/D/LRDOI:10/2016/181592K dated **27.10.2016** on the ground that the assessed percentage was less than 20%, hence this OA.

CONTENTIONS OF THE PARTIES

4. 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 disability by the Medical Board and that the Release Medical Board has held his disability ID LBA changed to PIVD L5-51 @ 20% for life - Aggravated by service, Which was reduced to @ 11-14% and the disability pension was not granted on ground of unwillingness for surgery, which is arbitrary in nature and overrules the opinion of the duly constituted medical board.

5. 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 the disability and that his disability percentage could have been reduced if the applicant had undergone the treatment/ surgery.

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ANALYSIS

6. On a consideration of the submissions made on behalf of either side, the only question for consideration before us is whether refusal/unwillingness to undergo surgery for a disability will be a reasonable ground to deny grant of disability pension claim, specifically when the disability has been held to be attributable to and aggravated by military service by a duly constituted medical board.

7. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that the minimum qualifying criteria for the grant of disability pension is 20% or more for grant of disability pension in terms of Para 101 of the Pension Regulation for the Navy, 1964. In the instant case, it is not in dispute that the RMB had assessed the disability at 20% for life but reduced it to @ 11-14% for life as the applicant had refused to undergo treatment and the said disability is aggravated by the military.

8. Since, the disability of the applicant was considered to be aggravated by military service, hence, the applicant fulfils one of twin

conditions for the grant of disability pension. However, the reduction of percentage from 20% to 11-14% in relation to the said disability does not hold ground as there is a failure on the part of respondents and medical authority to supply any cogent reason for the said reduction of the percentage. Mere refusal to undergo surgery cannot be accepted as reasonable justification for reducing the percentage of the disability in absence of any reason about the assessment of improvement in the medical condition of the applicant after the treatment.

9. It is apposite to bring on record that the RMB had itself stated that even if the surgery had been performed, it could have probably reduced the disability percentage by 30%, therefore, even after the surgery, the said disability could not have been fully cured. The relevant extracts of the RMB to that effect is produced as under:

(c) Has the individual refused to undergo treatment/operation?

If so, individual's reason will be recorded

- yes, statement and unwillingness certificate attached

(d) has the effect of refusal been explained to and fully understood by him/ her viz, a reduction in, or the entire

withholding of any disability pension to which he/she might otherwise be entitled?

- yes

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

- Yes, surgery will have reduced the percentage. not have cured the disability.

(f) If the answer to(e) is in affirmative, what is the probable percentage to wish the disability could have been reduced by operation/ treatment?

- 30% of disability percentage

10. Reliance is also placed on the DGAfMS, MoD letter vide 16036/RMB/IMB/DGAfMS/MA (Pension) dated 16.04.2019 which clarified the assessment for the cases of spinal disorder stating that "Refusal to undergo surgery for spinal disorders e.g. PIVD stands to reason and hence should not become a reason to reduce the percentage of the disability". Further, reliance is placed on the order dated 02.05.2023 of this Tribunal in OA 205/2019 in ***Ex LME Pramod Yadav Vs. Union of India & Ors.*** and on the order dated 07.07.2022 in OA 177/2022 of the AFT, Regional Bench, Lucknow in the case of ***Amendra Kumar, CHEA Rtd. V Union of India and***

Ors., which reads as under:

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7. Considering all aspect of the case, we are of the opinion that spinal operation has not reached a level of validating and trust where success can be guaranteed for 100% recovery. On the contrary there is a lot of reServations on undertaking spinal operation. Hence, the unwillingness of the applicant for surgery (spinal operation) in our opinion is not a valid ground for reducing his disability percentage from 20% to 16% specially when one considers the complications which are associated with spinal operation. As such, we hold that the percentage of disability of the applicant is 20% for life".-

11. The refusal to undergo 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 refusal for surgery by an individual in each of the disability is considered reasonable and the denial of grant of disability pension just because the applicant was unwilling to undergo surgery, for the disabilities which are well attributable to and aggravated by service, is wholly erroneous.

12. Regarding broadbanding benefits, we find that the Hon'ble Supreme Court in its order dated 10.12.2014 in **Union of India Vs. Ram Avtar**, Civil Appeal No. 418 of 2012 and connected cases, has observed that individuals similarly placed as the applicant are entitled



to rounding of the disability element of pension. We also find that the Government Of India vide letter No. F.NO. 3(11)2010-D(Pen/Legal) of, Ministry of Defence dated 18th April 2016 has issued the instructions for the implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

CONCLUSION

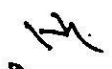
13. In view of the aforesaid analysis, the prayer made by the applicant in the present OA is thus allowed and the respondents are directed to grant the disability element of pension to the applicant in relation to the disability LBA changed to PIVD L5-51 @ 20% for life rounded off to 50% for life with effect from the date of retirement i.e. 31.10.2016 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).

14. 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.

15. With the aforesaid directions, the present OA 804/2017 is disposed off.

Pronounced in the open Court on this day of 12 November, 2024.


JUSTICE RAJENDRA MENON
CHAIRPERSON


REAR ADMIRAL DHIREN VIG
MEMBER (A)

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