

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

OA 11/2025 WITH MA 16/2025

Col Mahendra Kumar Singal Applicant
Versus
Union of India and Ors. Respondents

For Applicant : Mr. Rajiv Manglik, Advocate
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM

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

ORDER

MA 16/2015

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others vs. Tarsem Singh [(2008) 8 SCC 648], the MA to condone the delay of 232 days is allowed, thus, condoning the delay in filing the OA.

2. Accordingly, the MA stands disposed of.

OA 2116/2019

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant 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 @15% rounded of to 50% with effect from the date of retirement of the applicant; along with all consequential benefits.

BRIEF FACTS OF THE CASE

4. The applicant was commissioned into the Indian Army as a Lieutenant on 13.06.1987. In Dec 2013, while posted at Burtuk/Gangtok, the applicant developed pain in the abdomen and was diagnosed with Acute Calculi and subsequently, on 23 Jan 2014 he underwent laparoscopic surgery converted to an open cholecystectomy under GA and was placed in LMC post operation.

5. In September 2018, during his Re-cat medical board, he was found to be suffering from an **Incisional Hernia**, which was declared attributable to military service, and his earlier disability was upgraded. The medical board awarded a 20% disability under Para 22(c) of GMO 2008. The applicant superannuated on 31.05.2020, and underwent a Release Medical Board (RMB) in January 2020. While the RMB confirmed that the Incisional

Hernia was attributable to military duties, it reduced the disability percentage to 15%.

6. His claim for disability pension was initially rejected vide letter No.13101/IC-44893Y/Engrs/MP-6(c)/219/2020/AG/PS-4(Imp-I) dated 27.05.2020 on the basis that the RMB assessed the disability at 15%, which is below the 20% minimum threshold required under Para 37 of the Pension Regulations for the Army, 2008, for grant of disability element. He filed first and second appeals challenging this decision, asserting the initial medical board's 20% assessment, which were rejected vide letter No.13101/IC-44893Y/Engrs/MP-6(c)/219/2020/AG/PS-4(Imp-I) dated 17.02.2021 and letter No. B/38046A/463/2023/AG/PS-9 dated 11.11.2023 on the same ground.

SUBMISSIONS ON BEHALF OF THE APPLICANT

7. It is the case of the applicant that the medical boards that examined the applicant, including the one in 2018 and the Release Medical Board in 2020, both recognized the incisional hernia as attributable to military service and the initial assessment by Recategorisation Medical Board in 2018 awarded a disability

percentage of 20%, in accordance with Para 22(c) of the Guide to Medical Officers (GMO), 2008, however, the Release Medical Board inexplicably reduced the disability to 15% without providing any clinical or regulatory justification, in the absence of any new medical evidence or reasoning.

8. It is submitted by the applicant that his claim for disability pension is further strengthened by the provisions of the Pension Regulations for the Army, 1961, particularly Regulation 173, which mandates that a disability pension is payable if the disability is attributable to or aggravated by military service and is assessed at 20% or more. Moreover, the applicant has placed reliance upon MoD letter dated January 31, 2001, clarifying that the disability percentage should be rounded off to the next higher bracket, ensuring that those with a disability of 20% or more are entitled to a pension calculated at 50%.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

9. Per contra, it is the case of the respondents that the disability of the applicant - **Incisional Hernia** was assessed by RMB at 15% for life and was held attributable to military service, however, the disability percentage is below the minimum threshold of 20%

prescribed in Para 37 of the Pension Regulations for the Army, 2008, which is a mandatory condition for grant of the disability element of pension and therefore, the initial claim was rightly rejected by the competent authority, and subsequent appeals were dismissed by the Appellate Committee on First Appeals and the Second Appellate Committee on Pensions on the same well-founded legal and medical grounds.

10. It is further submitted by the respondents that the assessment of disability percentage by the Release Medical Board is final and binding unless altered by a competent Review Medical Board or appellate medical authority and in the present case, no review or revision of the medical assessment has been sought or obtained by the applicant, nor is there any clinical or documentary evidence to substantiate a higher disability rating, therefore, the entitlement to disability pension must adhere to the prescribed regulatory framework and cannot be granted based on unsupported assumptions or reassessments.

CONSIDERATION

11. We have heard learned counsel for the parties and have perused the medical boards placed on record. On the perusal of

aforesaid material placed on record, we find that the only issue for determination before us is whether the assessment of the disability - **Incisional Hernia** of the applicant could have been reduced to 15% by the Release Medical Board (RMB).

12. At this point, we find it pertinent to refer to 'Part-VI Statement of Case' of the Release Medical Board, under the heading 'Clinical details', reproduced as under:

"Clinical details:-

(a) *Detailed History:- Onset of ID in Sep 2018 at Delhi (Peace Area). Offr had earlier undergone Laproscopic cholecystectomy converted to open cholecystectomy at CH (EC) on 23 Jan 2014. Post op he developed SSI for which he underwent debridement and secondary suturing. He developed incisional hernia diagnosed at BHDC at a belated stage in Sep 2018. He was advised surgery but was unwilling. Unwillingness certificate dated 17 Dec 2018 attached."*

13. Further, we now refer to Part VII – Opinion of Medical Board, wherein vide detailed justification provided for the onset of the disability, it has been stated by the Release Medical Board as under:

Part VII
OPINION OF THE MEDICAL BOARD

1. Please endorse diseases/dis in chronological order of occurrence:-

	<i>Disability</i>	<i>Attributable to service (Y/N)</i>	<i>Aggravated by service (Y/N)</i>	<i>Detailed Justification</i>
(a)	<i>Incisional Hernia</i>	<i>Yes</i>	<i>No</i>	<i>Onset of ID in Sep 2018 (Peace Area). The ID is due to consequence of Laproscopic surgery converted to open cholecystectomy. Hence, ID considered attributable as per para 41 Chapter VI of GMO, 2008.</i>

14. From the aforesaid history of the applicant as well as the detailed justification given by the Release Medical Board, it is clear that the disability of the applicant arose as a result of a surgery which was later converted to open cholecystectomy and thus, the Release Medical Board has held it to be attributable to service. Now, the only question remains to be answered is whether unwillingness for surgery will warrant reduction of assessment of the disability. To analyse this question, as to whether the unwillingness for surgery could have resulted in reduced assessment, we find it pertinent to refer to “Part VII – Opinion of Medical Board” of which relevant portions is reproduced as under:

<i>2(a) Was the diseases/disability attributable to the indl's own negligence or misconduct? If Yes, in what why?</i>	<i>NO</i>
<i>(b) If not attributable, was it aggravated by negligence or misconduct? If so, in what way and to what percentage of the total disablement?</i>	<i>NA</i>
<i>(c) Has the indl refused to undergo operation/treatment? If so, have the indl's reasons will be recorded. Note:- In case of refusal of operation/treatment a certificate for the indl will be att.</i>	<i>Yes, personal reasons privy to indl.</i>
<i>(d) Has the effect to refusal been explained to and fully understood by indl, viz, a reduction in, or the entire withholding of any disability pension to which he/she might otherwise be entitled?</i>	<i>Yes, by the surgeon</i>
<i>(e) Does the medical board consider it probable that the operation/treatment would have cured the disability or reduced its percentage?</i>	<i>Yes, The defect could have been repaired</i>

<i>(f) If the replays (e) is in affirmative, what is the probable percentage to which the disablement could be reduced by operation/treatment?</i>	<i>Yes, possible with surgery</i>
<i>(g) Does the medical board consider indls refusal to submit to operation/treatment reasonable? Give reasons in support of the opinion specifying the operation/treatment recommended</i>	<i>Personal reasons not stated by offr. Privy to indl.</i>

15. On a detailed analysis of the aforesaid questions posed to the applicant by the Release Medical Board and the answers provided herein, it is clear that the individual has refused the surgery, which as per the opinion of the Medical Board could have cured/repared the disability. However, there is no clarification nor any reasons by the Surgeon or the Medical Board to the effect as to what percentage of repairment or cure surgery is going to offer, if the applicant undergoes surgery for this disability.

16. At this point, we have referred to Part II – Personal Statement of the Release Medical Board, wherein it is essential to refer to the answer of the applicant to the question posed by the Medical Board, enshrined as under:

2 (d) Did you refuse treatment or surgery ? If so, give details and reasons for refusal. Yes. On 17 Dec 2018 for personal reasons (unwilling for repeated surgeries as incisional hernia detected in Sep 2018 after about four years and seven months of open cholecystectomy, post operation development of severe wound infection, debridement and secondary suturing at CH (EC) during Jan-Feb 2014)

17. It is clear from the aforesaid reasoning given by the applicant that he was unwilling for repeated surgeries, as the disability of incisional hernia has been detected post operation development of severe wound infection, due to open cholecystectomy, which in our opinion is a justified ground for refusal of surgery, especially, when the disability has arisen as a consequence of another surgery. Furthermore, with no reasoning or clarification to substantiate as to whether surgery could have healed the disability of - Incisional Hernia, we find the reduction of the percentage of disability due to such refusal, unwarranted and not according to law.

18. We find support in judgment of this Tribunal in *Ex Sgt Praveen Senwal v. UoI & Ors. [OA 1595/2017; Date of decision- 20.09.2023]*, wherein it has been observed as under:

14. 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 6-10% 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.

19. In view of the aforesaid analysis, with respect to the reduction of the assessment of the disability in absence of any reasonable justification that the surgical intervention will cure the disability fully, especially, when the disability has arisen specifically due to a surgical intervention itself, we are of the considered opinion that the refusal to undergo surgery cannot be considered as a valid reason for reducing the percentage of disability, and hence, we hold that the disability of the applicant shall be considered to be 20%.

20. 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).

21. Applying the above parameters to the case in hand, we are of the view that the applicant has been discharged from service in low medical category on account of the said disability which is assessed aggravated by military service. The initial percentage of disablement 20% disability holds good.

22. Therefore, in view of our analysis, the OA 11/2025 is allowed and the respondents are directed to grant the benefit of disability element of pension @20% (for *Incisional Hernia*) for life which is directed to be rounded off to 50% for life in view of judgment of Hon'ble Apex Court in *Union of India Versus Ram Avtar* (supra) from the date of superannuation i.e. 31.05.2020. The arrears shall be disbursed to the applicant within 3 months of receipt of this order failing which it shall earn interest @6% p.a. till the actual date of payment. However, owing to the delay in filing of OA, the arrears shall be restricted to three years prior to filing of OA [Date of filing of OA:- 02.01.2025].

23. Hence, present OA 11/2025 is allowed.

24. No order as to costs.

25. Pending miscellaneous application(s), if any, stand closed.

Pronounced in the open Court on this 12th day of December,
2025

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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