

COURT NO. 2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
OA No. 246 of 2014

Vijay Singh

..... **Applicant**

Versus

Union of India & Others

..... **Respondents**

For Applicant : Mr. Anil Kumar Srivastava, Advocate

For Respondents : Karan Singh Bhati, Sr. CGSC and
Mr. Yogeshwar Krishnan, Advocate

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

1. Invoking the jurisdiction of this 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 are read as under: -

“(a) take the applicant back in the Indian Navy with back wages from the date of his discharge with 12% interest in a suitable job (like he was performing before his

discharge and permit him to continue in service till he would have completed a total of 52 years of total service;

(b) allow the applicant to count his previous service towards all service benefits;

(c) treat the applicant's composite disability as 100% as assessment of each of two disabilities of the applicant has been 50% and 30%;

(d) Grant ex-gratia payment of Rs. 20 Lakhs for the mental agony and physical distress caused to the applicant and his family;

(e) grant disability benefits out of the Naval Group Insurance Fund, in addition to above reliefs;

(f) Issue any other order(s) or direction(s) as this Hon'ble Court, in the longer interest of the justice, equity and fair play deem fit to do so."

BRIEF FACTS

2. The applicant was enrolled in the Indian Navy on 02.02.1995 and discharged from service on 28.02.2010, after completion of initial terms of engagement of 15 years, in Low Medical Category (LMC) S3A3 (A&P) with 70% disability.

3. The RMB at the time of release vide AFMSF-16 dated 19.06.2009 assessed the disabilities; **i) OSTEOCHONDROMA RT FEMUR OPTD WITH CERVICO TROCHANTRIC FRACTURE (RT) FEMUR OPTD at @ 50% for life, and, ii) STRICTURE OF URETHERA at @ 30% for life.** Both the disabilities of the applicant have been assessed as attributable to the military service and the composite disability element qualifying for disability pension was assessed at @ 70% for life.

4. The applicant is already in receipt of disability element of pension for both the disabilities compositely assessed at @ 70%.

5. The learned counsel for the applicant, during the course of hearing, has sought to confine the prayer made in the OA for seeking the grant of disability element of pension compositely at @ 100% and for the grant of ex-gratia of Rs. 20 lacs only, i.e., prayer clause (c) and (d) only. Thus, the present case is being considered for prayer clause (c) and (d) only.

CONTENTIONS OF THE PARTIES

6. The learned counsel for the applicant submitted that the Applicant was enrolled as Seaman II in the Indian Navy on

02.02.1995 after rigorous training, where he was thoroughly medically examined and found fit, with no disabilities recorded at the time of his entry.

7. The learned counsel for the applicant submitted that the applicant was admitted at INHS Asvini at Mumbai, for investigations of a complaint of pain in the right leg, at the hip joint and that the disease of the applicant was wrongly diagnosed as tuberculosis and he was put on Anti-Tuberculosis drugs for six months.

8. The learned counsel for the applicant submitted that the applicant's condition did not improve with the initial treatment for Tuberculosis and he was re-admitted in INHS Asvini where a CT scan and needle biopsy was done disclosing the actual cause of disability of the applicant, i.e., benign tumour in the right leg at the hip point.

9. The learned counsel for the applicant submitted that the applicant was accordingly operated for removal of the tumour by the doctors and during the operation, the applicant suffered fracture of the head of the femur bone due to excessive force

applied and thereby alleges medical negligence due to which the applicant's medical condition was worsened.

10. The learned counsel for the applicant submitted that owing to the medical negligence of the Naval doctors of INHS Asvini, the applicant was placed in low medial category S3A2 (Permanent) with 70% disability for life attributable to the military service.

11. The learned counsel for the applicant in the rejoinder to the counter affidavit submitted that the second disability, i.e., 'Stricture of Urethra' was caused due to the damage to the urinary track by the catheter which was used by the Naval doctors during the operation of the fractured femur which was caused by the excessive application of force by the doctors.

12. *Per contra*, the learned counsel for the respondents submitted that the procedure administered to the applicant for osteochondroma were the recommended procedures and accordingly, osteotomy and bone grafting were done which is the correct line of treatment and that due diligence was exercised by the Naval doctors at INHS Asvini.

13. The learned counsel for the respondents submitted that keeping in view the medical condition of the applicant, he was employed in sedentary duties from 2000 to 2010 (i.e., for 10 years) and he was monitored continuously for his disability and was provided with the best medical care available from time to time.

ANALYSIS

14. We have heard the learned counsel for the parties at length and have perused the records produced before us. We find that both the disabilities suffered by the applicant have composite assessment at @ 70% for life by the RMB vide AFMSF-16 dated 19.06.2009. The applicant is already in receipt of disability element of pension compositely at @ 70% for both the disabilities i.e., **i) OSTEOCHONDROMA RT FEMUR OPTD WITH CERVICO TROCHANTRIC FRACTURE (RT) FEMUR OPTD at @ 50% for life, and, ii) STRICTURE OF URETHERA at @ 30% for life.** The issues, in the instant case, that are required to be considered are two-folds:

- a) Whether the applicant is entitled for the benefit of rounding off of the disability element of pension from 70% to composite assessment of 100%, and
- b) Whether the applicant would be entitled for the grant of ex-gratia payment of Rs. 20 Lakhs?

15. It is an undisputed fact that at the time of enrolment in the Indian Navy on 02.02.1995, the applicant was found medically and physically fit and the onset of the disabilities was in the year 1999 for 'OSTEOCHONDROMA RT FEMUR OPTD WITH CERVICO TROCHANTRIC FRACTURE (RT) FEMUR OPTD' and in the year 2000 for 'STRICTURE URETHERA.'

16. In the present case, RMB at the time of release had assessed both the disabilities of the applicant as attributable to the military service and the applicant is already in receipt of disability element of pension at @ 70%, therefore, the question of the attributability is already settled.

17. It is contention of the counsel for the applicant that the calculation of the composite assessment of the disabilities at @ 70% is actually in violation of the provisions of the DGAFMS

letter No. **16036/RMB/IMB/DGAFMS/MA(PENS)** dated
14.12.2009.

18. The office of DGAFMS, MoD issued letter no. **16036/RMB/IMB/DGAFMS/MA(pens) dated 14.12.2009** to bring out the correct method of computing composite disabilities in case when there are two or more disabilities due to service.

The relevant extract of the above letter is reproduced as under: -

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2. As per the present laid down policy whenever there are two or more disabilities due to service, the compensation will be based on the composite assessment of the degree of disablement. When separate disabilities have entirely different functional effects, the composite assessment is taken as the arithmetical sum of their separate assessments. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping.

3. It has been observed by this office during perusal of RMB/MB proceedings conducted at various hospitals of the armed forces, that on several instances the members of the armed forces having two or more disabilities having similar assessment for individual disabilities have been

given a composite assessment which have a wide variance between different Medical Boards thus defying fairness and uniformity. Particularly those cases pertaining to the former policy as mentioned in Para 2 above, where the separate disabilities having different functional effects and the composite assessment is taken as the arithmetic sum of their separate assessments it has been found that members have been over assessed by the medical boards which is not commensurate with the overall functional ability of the individual.

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19. Thus, the composite assessment of the percentage of disablement for the disabilities, (i) OSTEochondroma RT FEMUR OPTD WITH CERVICO TROCHANTRIC FRACTURE (RT) FEMUR OPTD and (ii) STRICTURE OF URETHERA is recalculated as per Para 2 the aforesaid letter dated 14.12.2009 computes as follows:

Disability	Assessment	Net Assessment
OSTEOCHONDROMA RT FEMUR OPTD WITH CERVICO TROCHANTRIC FRACTURE (RT) FEMUR OPTD	50%	50%

STRICTURE OF URETHERA	30%	15%
<u>Calculation:</u> Disability 1 - OSTEOCHONDROMA RT FEMUR OPTD WITH CERVICO TROCHANTRIC FRACTURE (RT) FEMUR OPTD = 50% Disability 2 - STRICTURE OF URETHERA (100-50) = $50 \times 30 / 100 = 15\%$ Composite Assessment = 50 + 15 = 65% The rounding off of the composite assessment of 65% will be 75%.		

20. Qua the *ex-gratia* compensation, it is pertinent to note that initially, as per the opinion of surgical specialist, the applicant was diagnosed as a case of TB Hip (Right) and was administered with the Anti-Tuberculosis Treatment (ATT) and accordingly was admitted in INHS Asvini on 24.05.1999. The applicant was again re-admitted on 07.09.1999 for Tuberculosis Synovitis (Right) hip, however, the actual cause of disability of the applicant was the growth of benign tumor on the hip joint of right leg of the applicant which was correctly diagnosed by the doctors in January, 2000 and was accordingly operated in February, 2000. The respondents in para 6 of their counter affidavit also accepted the fact that due to wrong diagnosis and administration of treatment i.e., Anti-Tuberculosis Treatment, the applicant had also suffered drug induced hepatitis which got resolved after the treatment was stopped.

21. During the operation, the applicant suffered with the fracture of the head of femur bone which further aggravated the disability of the applicant. The respondents in para 6 of their counter affidavit state that the applicant suffered the fracture of femur during the operation while the doctors were trying to reach the complete extent of tumor. The applicant had undergone multiple surgeries and was re-operated for his ailment and fracture on 17.07.2000, 09.08.2000 and 29.11.2000 which were essential to cure the condition of the applicant, however, these surgeries did result in shortening of the femur bone by 1 centimeter.

22. In view of the above, as admittedly the surgeries conducted on the applicant by the respondents resulted in shortening of 01 centimeter of the femur bone, the applicant is held entitled for a compensation of Rupees 5 Lakhs for the mental agony and physical distress suffered by him.

CONCLUSION

23. The OA 246 of 2014 is thus partially allowed. The applicant is entitled to the disability element of pension with regard to both

the disabilities viz (i) OSTEONCHONDROMA RT FEMUR OPTD WITH CERVICO TROCHANTRIC FRACTURE (RT) FEMUR OPTD and (ii) STRICTURE OF URETHERA, compositely assessed at @ 65% (in view of DGAFMS, MoD letter no. **16036/RMB/IMB/DGAFMS/MA(pens) dated 14.12.2009**) for life from the date of discharge, which in terms of the verdict of the Hon'ble Supreme Court of India in **UOI & Ors. Vs. Ramavtar Civil Appeal 418/2012 dated 10.12.2014**, is directed to be broad banded to 75% for life from the date of discharge of the applicant. Since the applicant is already in receipt of disability element of pension for both the disabilities at @ 70%, the amount of arrears be paid after adjusting the amount already paid to the applicant. The applicant be also paid a one-time lumpsum ex gratia payment of Rs. 5 Lacs as brought out in para 22 above.

24. The respondents are directed to calculate, sanction and issue the necessary Corrigendum PPO to the applicant within three months from date of receipt of the copy of this order and in the event of default, the applicant shall be entitled to interest @6% per annum till the date of payment.

25. There is no order as to costs.

26. MA, if any, stands disposed off accordingly.

Pronounced in the open Court on this 6 day of February, 2025.

[REAR ADMIRAL DHIREN VIG]

MEMBER (A)

[JUSTICE ANU MALHOTRA]

MEMBER (J)

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