

**COURT NO. 3, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**OA 361/2018**

**Ex Sgt Abhaya Kumar Rath**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. V S Kadian, Advocate**

**For Respondents : Mr. Arvind Patel, Advocate**

**CORAM :**

**HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)**

**HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)**

**ORDER**

Invoking the jurisdiction of this Tribunal; under Section 14, of the Armed Forces Tribunal Act, 2007 the applicant has filed this application and the reliefs claimed in Para 8 read as under:

- (a) Quash and set aside the impugned order no Air HQ /99798 /1/721024/DAV/DP/CC dated 30.11.2017 . And/or*
- (b) Direct respondents to grant disability element of pension to the applicant by correctly assessing his disability and/or by granting benefit of rounding off @ 50% in terms of Govt of India, Min of Defence letter no 1(2)/97/D(Pen-C) dated 31.01.2001 and/or*

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- (c) *Direct 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 case along with cost of the application in favour of the applicant and against the respondents.*

### **BRIEF FACTS**

2. The applicant was enrolled in Indian Air Force on 01.07.1988 and was discharged from service on 30.06.2017 rendering 29 years and 1 day of service in low medical category A4G4(P). The Release Medical Board held on 04.07.2016 opined that the applicant was found to be suffering from **'Prolapsed Inter Vertibral Disc L4-L5 (Old)'**. The said disability was assessed 30% for life, however the net assessment qualifying for disability pension was assessed as 30% for life and the net disability was held as 'Aggravated by military service'. The assessment was reduced from 30% to 15-19% for life due to applicant's unwillingness for surgery.

3. On adjudication, AOC AFRO has upheld the recommendations of RMB and rejected the disability pension claim of the applicant vide letter no. RO/3305/3/Med dated 29.09.2017. The outcome was communicated to the applicant vide letter No. Air HQ /99798 /1 /721024 /06 /17 / DAV (DP/RMB) dated 07.11.2017 with an advice that he may prefer an appeal to the appellate committee with six months from the date of receipt of the letter.

4. The applicant thereafter sent a legal notice dated 31.10.2017 which was replied to by the respondents vide letter Air HQ /99798/1/721024/DAV/DP/CC dated 30.11.2017. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in terms of Section 21 (1) the AFT Act, 2007, we take up the same for consideration.

### **CONTENTIONS OF THE PARTIES**

5. The learned counsel for the applicant submitted that the applicant suffered from '**Prolapsed Inter Vertibral Disc L4-L5 (Old)**' while performing bonafide military duties in

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Srinagar, Jammu & Kashmir. Subsequently, in April 2012, he was downgraded to a low medical category at Air Force Station Kalaikunda and admitted to 4 Air Force Hospital, Command Hospital (Eastern Command), Kolkata. The Initial Medical Board held on 10.05.2012 assessed his disability as aggravated by military service due to stress and strain of military service.

6. The learned counsel for the applicant further submitted that the applicant had applied for further extension of service, which was denied due to his low medical category. Consequently, his service was curtailed. It is pointed out that prior to discharge, a RMB was conducted, which assessed his disability @ 30% for life, aggravated by military service. However, the applicant was not granted disability element of pension for the disability suffered while in service and held aggravated due to service condition though he was meeting the eligibility criteria for grant of same.

7. Inter alia the applicant has submitted that he was suffering from a prolapsed disc which included neurological

complications and placed reliance on para 51 of the GMO (Military Pensions) 2008 which reads as under:-

**"51.Low backache.** *Low backache is a clinical entity which is characterised by pain in the lower back which may be associated with sciatica and neurological deficit. The causes of low backache are:*

- (a) Musculofascial strain
- (b) Lumbar spondylosis
- (c) Facet joint arthropathy
- (d) Prolapsed inter vertebral disc
- (e) Sacroilitis
- (f) Ankylosing Spondylitis
- (g) Spondylolisthesis
- (h) Trauma

*Post traumatic low backache will be considered attributable. Aggravation due to stress & strain of service should be conceded in other cases."*

8. Further placing reliance on the DGMS letter no 16036/RMB/IMB/DGMS/MA(Pension) dated 16.04.2019 which provides that refusal to surgery for Spinal Disorder i.e PIVD cases stands to reason and hence should not become a reason for reducing disability percentage, it is urged that in the light of aforementioned, applicant cannot be denied the relief as claimed.

9. The learned counsel for the applicant also placed reliance on the verdicts of the Hon'ble Supreme Court in the case of

CA-5605/2010 titled **Sukhvinder Singh** vs **UOI** 2014(14) SCC 364, 2014(8) SCALE 619 2015 (3) SLR 5, Civil Appeal No. 418/2012 titled as **UOI & Ors** vs **Ram Avtar** decided on 10.12.2014. The learned counsel of the applicant also placed reliance on the orders of the AFT, Principal Bench, New Delhi in OA No. 48/2011 titled **Ex Rect Chena Ram** vs **UOI & Ors.** dated 17.04.2013, and OA no 1865/2019 titled **Ex Sgt Sanjay Kumar vs. UOI & Ors**, wherein similarly situated personnel were given relief.

10. Per contra, the learned counsel for the respondents submitted that the RMB considered the disability of the applicant to be 30% and held it to be 'aggravated by military service.' However, as the applicant refused to undergo the surgery as advised, the assessment for the said disability was reduced to 15-19% for life as per the policy in vogue.

11. The learned counsel further submitted that the applicant's disability is assessed at less than 20% does not fulfill the necessary twin conditions for being eligible to get disability pension in terms of Rule 153 of Pension Regulations

for IAF, 1961 (Part-1). Thus the applicant is not entitled to disability pension and, therefore, the OA deserved to be dismissed.

### **ANALYSIS**

12. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, since, the disability of the applicant was considered to be 'aggravated by military service'; hence, the applicant fulfils one of twin conditions of Rule 153 of Pension Regulations for IAF, 1961 (Part-1) for the grant of disability pension. However, the reduction of percentage from 30% to 15-19% 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.

The RMB assessed the disability of the applicant i.e PIVD as 'aggravated by military service' due to physical stress and strain of service and based on nature and course of disability as per Para 51 (d), Chapter VI of Guide to Medical Officer (Military Pension) 2002 amendment 2008. Despite this, the percentage of disablement was reduced from 30% to 15-19% for the reason that the applicant refused to undergo the surgery in relation thereto. The RMB proceedings further indicate to the effect that it was stated therein in Para-5(a) to (h) to the effect:-

- "2.(a) Was the disease/disability attributable to the individual's own negligence or misconduct? **N/A**
- (b) If not attributable, was it aggravated by negligence or misconduct? If so, in what way and to what percentage of the total disablement? **N/A**
- (c) Has the individual refused to undergo operation/treatment? If so, individual's reasons will be recorded? **Yes, individual is still unwilling for surgery.**
- (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, the disability percentage has been reduced due to unwillingness for surgery.**



- (e) Does the Medical Board consider it probable that the operation/treatment would have cured the disability or reduced its percentage? **N/A**
- (f) If the reply to (e) is in affirmative, what is the probable percentage to which the disablement could be reduced by operation/treatment? **N/A**
- (g) Does the Medical Board consider individual's refusal to submit to operation/treatment reasonable? Give reason in support of the opinion specifying the operation/treatment-recommended. **N/A."**

13. Reliance is also placed on the DGAFMS, MoD letter vide 16036/RMB/IMB/DGAFMS/MA (Pension) dated 16.04.2019 wherein it is clarified that "*Refusal to undergo surgery for spinal disorder e.g. PIVD stands to reason and hence should not become a reason to reduce percentage of the disability.*" In spite of clear guidelines issued by the respondents themselves that in cases of PIVD, the refusal for surgery will not entail any reduction in the percentage of the disability, the respondents in the instant case have reduced the disability from 30% to 15-19% which is not tenable.

14. 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 **Amrendra Kumar, CHEA ® (Retd.) vs. Union of India & Ors.** which reads as under:-

*"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".-*

### **CONCLUSION**

15. 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 disability PIVD, which is assessed as 'aggravated by military service' and the initial percentage of disablement of 30% disability holds good.

16. Therefore, in view of our analysis, OA 361/2018 is allowed and the respondents are directed to grant the benefit

of disability element of pension @ 30% (for PIVD) 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 vs. Ram Avtar (supra)** from the date of discharge i.e. 30.06.2017. The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

Pronounced in the open Court on this 29<sup>th</sup> day of May, 2025.

(JUSTICE NANDITA DUBEY)  
MEMBER (J)

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

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