

**COURT NO. 2**  
**ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**OA 1131/2015 WITH MA1067/2015**

**Lt Col HS Sharma (Retd)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant** : Mr. SS Pandey, Advocate

**For Respondents** : Mr. V Pattabhi Ram, Advocate

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)**

**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**O R D E R**

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

*"(a) To summon complete records and documents relating to the medical treatment and disability, pertaining to the applicant from the respondents for proper adjudication of the case.*

*(b) To quash the order passed by the respondent no 4 (copy not supplied but communicated vide letter dated 28 November 2001, Annexure no-8) whereby the composite disability in respect of the applicant has been illegally and against the policy has been reduced to 40% from 60%.*

*(c) To issue any other order, directions to the Non applicants deemed appropriate and proper in the facts and the circumstances of the case in the favour of the applicant.*

*(d) To, award cost to the applicant.*

## **BRIEF FACTS**

2. The applicant was commissioned in the Indian Army on 22.12.1979 and retired from the service on 02.01.2001 under the clause of "Prematurely retired from service" after rendering total 21 years and 12 days of regular service. The Release Medical Board held on 28.10.2000 found the applicant fit to be released from service in low medical category P2 (P) and assessed the disabilities of (i) IDK (Rt) @ 30%, (ii) Fracture Head of Fibula @ 30% (iii) IBS @ 30%, (iv) Obesity @20%, (v) Type IV Hyperlipidemia & (vi) ECG Abnormality (TMT +ve) compositely assessed @ 60% for two years. While the first and second disability, 'IDK (Rt)' and 'Fracture Head of Fibula' was conceded to be 'Attributable to military service', the other four disabilities viz 'IBS', 'Obesity', 'Type IV Hyperlipidemia' and 'ECG Abnormality (TMT +ve)' were held to be 'neither attributable to nor aggravated by service' by the RMB. However, the applicant was not granted the disability pension, in view of his having retired prematurely prior to 1<sup>st</sup> January 2006 in view of GoI letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009.

3. The applicant submitted an application to the Competent Authority for issue of 'eligibility certificate' for oil

product agency in Jan 2001 and the same was rejected by the Competent Authority and the decision was communicated to the applicant vide Ministry of Defence, Dte General Resettlement letter No.\*1420/DGR/SE-II/Oil/Gen dated 28.11.2001.

4. The applicant further filed a Writ Petition No. 203/2009[*HS Sharma vs Union of India and Others*] before the Hon'ble High Court of Uttarakhand for grant of disability pension and eligibility certificate for allotment of quota of petroleum products. The said Writ Petition was transferred to the Regional Bench of AFT at Lucknow and the same was registered as TA No 568/2010. The Regional Bench AFT, Lucknow dismissed the same vide order dated 05.05.2011 holding that the applicant was not entitled to disability pension.

5. In the meanwhile, the AFT (PB) in OA No. 336/2011 titled ***Maj (Retd) Rajesh Kumar Bhardwaj vs. Union of India*** and others decided on 07.02.2012 held that clause 3 of the notification which had made it applicable only to those servicemen who retired after 01.01.2006 has been struck down and the personnel who were prematurely discharged from service were made eligible for disability

pension. Therefore, the applicant filed a review application being RA No. 03/2011 before the Lucknow Bench of AFT and vide order dated 18.10.2012 passed in the same, the applicant was permitted to file a representation to seek disability pension benefit in terms of the circular dated 29.09.2009 and for grant of eligibility certificate for oil products and the respondents were directed to consider any such representation filed without delay in accordance with law following the directions of the AFT (PB) New Delhi in OA 336/2011 in **Maj (Retd) Rakesh Kumar Bhardwaj** (Supra).

6. Thereafter, the applicant filed a representation dated 14.12.2012 for grant of disability pension and issue of eligibility certificate for allotment of agency of petroleum products. The same has been rejected by the Adjutant General's Branch, IHQ of MoD (Army) vide letter No. B/40401/803/AG/PS-4(Legal) dated 30.09.2014 stating that being a PMR case, Regulation 50 of PRA 1961, Part-I is an absolute bar for grant of any award on account of any disability and that the applicant was also not eligible for rounding off (boradbanding) benefits and that as per extant policy, benefit of broadbanding can be extended to invalidated out cases only stating that this also has been

upheld by the Apex Court judgments in P K Kapur's and Nk Narikar's cases, and AFT (PB) New Delhi in IS Roperia's Case. Aggrieved by the rejection of his claim, the applicant has filed the present OA on 09.12.2025. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2) of the AFT Act 2007.

### **CONTENTIONS OF THE PARTIES**

7. The learned counsel for the applicant on 09.02.2026 submitted that the prayers made in the present OA are confined to the grant of disability element of pension in relation to the disability of (i) IDK (Rt) @ 30%, (ii) Fracture Head of Fibula @ 30% only which have been conceded to be 'attributable to military service' by the RMB, and the prayers made for grant of disability element of pension in relation to other four disabilities viz 'IBS', 'Obesity', 'Type IV Hyperlipidemia' and 'ECG Abnormality (TMT +ve)' are not pressed.

8. Placing reliance on the judgment of the Hon'ble Supreme Court in ***Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]***, the learned counsel for the applicant submitted that no note of any disability was recorded in the service

documents of the applicant at the time of the entry into the service, and that he served in the Army at various places in different environmental and service conditions in his prolonged service and thus thereby, any disability during the time of his service has to be deemed to be attributable to or aggravated by military service.

9. It was further submitted on behalf of the applicant that the applicant's disability 'IDK (Rt)' occurred in Jan 1990, while he was working in Fd HQ 'A' Range Assam Rifles and (ii) 'Fracture Head of Fibula' caused in Sep 1992, while he was working in Meerut, 90 GL Sec during his active service and the said disabilities have been assessed as attributable to Military Service by the Release Medical Board dated 28.10.2000.

10. The learned counsel for the applicant also placed reliance on MoD letter No. 16(05)/2008/D(Pension/Policy) dated 19.05.2017 in which grant of disability element to Armed Forces personnel who were retained in service despite disability attributable to or aggravated by Military Service and subsequently proceeded on premature/voluntary retirement prior to 01.01.2006 are given, para 3 of the said letter read as under:-

**“3. The issue of extension of above benefit to the Pre-2006 retired/discharged Armed Forces Personnel, who were retained in service despite disability attributable to or aggravated by military service, was under active consideration of Government. Now, the President is please to decide that all Pre-2006 Armed Forces Personnel who were retained in service despite disability and retired voluntarily or otherwise will be allowed disability element/ war injury element in addition to retiring/ service pension or retiring/ service gratuity, subject to the condition that their disability was accepted as attributable to or aggravated by military service and had foregone lump sum compensation in lieu of that disability. Further, concerned Armed Forces Personnel should still be suffering from the same disability which should be assessed at 20% or more on the date of effect of this letter.”**

11. Furthermore, learned counsel for the applicant submitted that even though the applicant's disabilities of 'IDK (Rt)' & 'Fracture Head of Fibula' have been conceded as 'attributable to Military Service' by the RMB, but the claim of his disability pension was rejected by the Competent Authority it being a PMR case.

12. *Per contra*, the learned counsel for the respondents submitted although RMB conceded the disabilities of applicant namely 'IDK (Rt)' and 'Fracture Head of Fibula', as 'Attributable to Military Service', however, the initial claim for grant of disability element of disability pension was not processed as the officer had retired prematurely prior to 01.01.2006 and as per GoI letter No. 16(5)/2008/D(Pens/Policy) dated 29.09.2009, disability

pension is entitled to those officers who become non-effective on or after 01.01.2006 on account of pre-mature retirement.

13. The learned counsel for the respondents further submitted that Regulation 48 of Pension Regulations for the Army, 1961 Part I which stipulates that disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of disability which is either attributable to or aggravated by military service in non-battle casualty cases and the disability is assessed at 20% or more; hence, his claim for the grant of the disability was rejected by the competent authority and thus the applicant is not entitled to the grant of the disability pension.

#### **ANALYSIS**

14. We have heard the learned counsel for the parties and have perused the record produced before us.

15. In view of the disabilities of the applicant namely 'IBS, Obesity, Type IV Hyperlipidemia & ECG Abnormality (TMT +ve) not being pressed by the applicant, we adjudicate only for the disability of 'IDK (Rt) & Fracture Head of Fibula', which have been assessed @ 30% each for two years.

16. It is an undisputed fact that at the time of joining the service in 1979, the applicant was found medically and physically fit and the present disabilities had occurred during active service and was thus conceded as 'attributable to military service' by the Release Medical Board dated 28.10.2000 with the reason for this assessment as 'Attributable' mentioned as 'vide CoI dated 25.05.1993'. The same is reproduced to the effect:-

**PART III**  
**OPINION OF THE MEDICAL BOARD**

- "1. Did the disabilities exist before entering service ? **No.**
2. (a) In respect of each disability the Medical Board on the evidence before it will express its views as to whether :-
- (i) It is attributable to service during peace or under filed service conditions ; or **1 & 2 - Yes, 3 to 6 - No**
- (ii) It has been aggravated thereby and remains so; or **1 to 6 No**
- (iii) It is not connected with service. **1 & 2 - No, 3 to 6 - Yes**

The board should statefully the reasons in regard to each disability on which its opinion is based:-

Disability	A	B	C
<b>1 IDK (Rt)</b>	<b>Yes</b>	<b>No</b>	<b>No</b>
<b>2 # Head of Fibula</b>	<b>Yes</b>	<b>No</b>	<b>No</b>
3 IBS	No	No	No
4 Obesity	No	No	No
5 Type-IV Hyperlipidemic	No	No	No
6 ECG Abnormality (TMT +ve)	No	No	No

(b) In respect of each disability shown as attributable under 'A' the Board should state, fully, the specific condition and period in service which caused the disability. **Dis 1 & 2 - Yes, attributable to mil service vide C of I dt 25 May 1993**

(c) In respect of each disability shown as aggravated under 'B' the Board should state fully -

(i) The specific condition and period in service which aggravated the Disability. **1 to 6 - NA**

(ii) Whether the effects of such aggravation still persist.

(iii) If the answer (ii) is the affirmative, whether effect of aggravation will persist for a material period."

17. However, the competent authority after adjudication opined that being a PMR case, Regulation 50 of PRA 1961, Part I is an absolute bar for grant of any award on account of any disability.

18. As far as the issue that the applicant took premature retirement on 02.01.2001 and thus is not entitled to disability pension, we may refer to the order passed by the Tribunal (PB) in **Maj (Retd.) Rajesh Kumar Bhardwaj Vs. Union of India & Ors. [O.A. No. 336 of 2011]** decided on **07.02.2012**, vide which all premature retiree armed forces personnel were allowed disability element of pension. Further, on the basis of the aforesaid order of the Tribunal, the respondents issued a policy in May, 2017 being GoI MoD letter No. 16(06)/2008/D(Pension/Policy) dated 19.05.2017 and the disability element of pension was allowed to all the pre-2006 Armed Forces personnel who were retained in service despite disability which is accepted as attributable to service and retired voluntarily or otherwise. Hence, since the disabilities of the applicant, namely, 'IDk (Rt)' & 'Fracture Head of Fibula' assessed @ 30% each for two years, have already been assessed as 'attributable to military service' by the RMB, in view of the order of the Tribunal in ***Maj (Retd)***

**Rajesh Kumar Bhardwaj** (supra) and the policy letter dated 19.05.2017, the applicant is entitled to grant of disability element of pension with effect from 01.01.2006.

19. Furthermore, with regard to the disability of the applicant, which was considered to be of permanent nature, but assessed for a particular period i.e. for two years, it is important to refer to the judgment of Hon'ble Supreme Court in the case of **Commander Rakesh Pande Vs. Union of India & Ors. [Civil Appeal No. 5970 of 2019]** decided on 28.11.2019, wherein the Hon'ble Apex Court while upholding the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, allowed the disability pension for life and observed as under:

***"Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.***

***[Emphasis supplied]***

It is pertinent to mention here that the Tribunal has followed the aforesaid judgment of the Hon'ble Apex Court in numerous cases where the duration of disablement was given for a particular period by the medical board however it was conceded to be for life.

20. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for the disability element of pension in respect of both the disabilities i.e. IDK (Rt) and Fracture Head of Fibula @ 30% each for life, the composite assessment of which is being calculated as per MoD letter No. 16036/RMB/IMB/DGAFMS/MA (pens) dated 14.12.2009 as under :

Disability (1) = 30% (the disability with maximum percentage)

Disability (2)  $(100-30) = 70 \times 30/100 = 21\%$

Composite Assessment =  $30 + 21 = 51\%$

The rounding off composite assessment of 51% will be 75%.

### **CONCLUSION**

21. In light of the above, O.A. No. 1131 of 2015 is allowed. The respondents are directed to grant the disability element of disability pension to the applicant with respect to his disabilities of IDK (Rt) and Fracture

Head of Fibula' compositely assessed @ 51% for life from the date of retirement, which is directed to be further rounded-off to 75% for life with effect from 01.01.2006 in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Ram Avtar** (Civil Appeal No. 418/2012), decided on 10.12.2014.

22. 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% per annum from the date of receipt of copy of the order by the respondents.

23. All pending application(s), if any, is/are accordingly disposed of.

24. There is no order as to costs.

Pronounced in the open Court on this 19<sup>th</sup> day of March, 2026.

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

/AK/

**[JUSTICE ANU MALHOTRA]**  
**MEMBER (J)**