COURT NO. 3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1401/2021

WITH

MA 1214/2021

Ex-WO Surender Pal Singh ..... Applicant
Versus
Union of India and Ors. ..... Respondents

For Applicant : Mr. Praveen Kumar, Advocate
For Respondents : Mr. Neeraj,Sr. CGSC with
Mr. Rudra Paliwal, Advocate and
Mr. Pradeep Sharma, DAV In-charge,
Legal Cell

CORAM :

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 1214/2021

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay in filing the present OA. In view of the judgment of the Hon'ble Supreme Court in the matter of ***Union of India and Ors.*** Vs. ***Tarsem Singh*** [(2008) 8 SCC 648] and the reasons mentioned in the application, the delay in filing the OA is condoned. The MA is disposed of accordingly.

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2. The applicant is aggrieved by **Annexure A-1** order dated 3rd June 2020, whereby the competent authority held that

he is not entitled to disability pension under Regulation 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I). The said decision is premised on the findings of the Release Medical Board, which recorded the disabilities, namely, (i) ACL Tear (Right) and (ii) Undisplaced Fracture of the Lateral Tibial Condyle (Right), as being neither attributable to nor aggravated by military service and/or assessed at below the minimum qualifying threshold of 20%.

3. The facts of the case, briefly stated, are that the applicant, Ex-Warrant Officer Surender Pal Singh, was enrolled in the Indian Air Force on 10th June, 1983 and was discharged from service on 31st July, 2020 upon fulfilling the conditions of enrolment and attaining the age of superannuation, after rendering 37 years and 52 days of regular service. At the time of enrolment, he underwent the requisite initial medical examination and was found medically fit for service in the Air Force. During the course of service, while posted at ETI, Air Force, Jalahalli, the applicant was placed in Low Medical Category A4G4 (T-24) in respect of ID–ACL Tear (Right Knee) vide AFMSF-15 dated 16th December, 2015. Subsequently, in December 2018, while serving at 7 Base Repair Depot, Air Force, New Delhi, he was diagnosed with ID–Undisplaced

Fracture of the Lateral Tibial Condyle (Right) and was placed in Low Medical Category A4G4 (T-24) (composite) vide AFMSF-15 dated 4th February, 2019. The applicant continued to be reviewed periodically for the aforesaid disabilities and was thereafter placed in Low Medical Category A4G3 (Permanent) (composite) vide AFMSF-15 dated 5th October, 2019. A Release Medical Board, not held solely on medical grounds, was convened at 7 Base Repair Depot, Air Force, vide AFMSF-16 dated 3rd December, 2019. The Board assessed the disability of ACL Tear (Right) as attributable to service at 10% for life and the disability of Undisplaced Fracture of the Lateral Tibial Condyle (Right) as neither attributable to nor aggravated by service at 20% for life. The composite assessment was recorded at 30% for life; however, the net qualifying disability for the purpose of disability pension was assessed as "Nil". On administrative consideration, the competent authority accepted the findings of the Release Medical Board and rejected the applicant's claim for grant of disability pension. The said decision was conveyed to the applicant vide letter dated 3rd June, 2020 granting him the liberty to prefer an appeal before the appropriate appellate authority. Availing the said remedy, the applicant submitted a first appeal

dated 18th August, 2020, which was considered and rejected by the First Appellate Committee for Disability Pension. The rejection was communicated to the applicant vide letter dated 16th May, 2022. Aggrieved thereby, the applicant has approached this Tribunal by way of the present OA seeking the following reliefs:

> **(a) Quash and set aside the impugned letter dated 03.06.2020;**
>
> **(b) Direct the respondents to grant disability pension @ 30% and rounding of the same to 50% for life to the applicant with effect from 01.08.2020 i.e. the date of discharge from service with interest @ 12% p.a till final payment is made;**
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> **(c) Grant any other relief which this Tribunal may deem fit and proper in the facts and circumstances of the case.**

4. Learned counsel for the applicant has stated that the respondents acted illegally by denying the applicant disability pension which is unjustifiable since while entering the service the applicant was found medically fit and the disabilities suffered by the applicant are contributing to the service in the Air Force having been putting him to continuous stress and strain of service, dietary compulsions, adverse climatic conditions of service and environmental factors. The applicant had actively participated in Kargil War (Op VIJAI) and Op PARAKRAM after

the terrorist attack on Indian Parliament. Further, as a RAD/Fit Tradesman he worked on Pichora Missiles and was responsible for providing uninterrupted communication round the clock to the Missile Sqn and most of the time he was deployed in field area along with surface to air transportable missile unit, therefore his disabilities are to be considered as attributable and aggravated by service accordingly granting him disability pension. He has also contended that the applicant was enrolled in the Air Force on 10th June, 1983 and the onset of ACL Tear (Rt) was in November 2015 at ETI AF Bangalore and the onset of Undisplaced Fracture Lateral Tibial Condyle (Rt) was in December 2018 when proceeding on leave he fell down from the train while boarding at New Delhi.

5. In support of the claim, learned counsel for the applicant relied upon a catena of decisions of the Hon'ble Supreme Court to emphasise the settled legal position governing pensionary entitlements. Placing reliance on ***Deokinandan Prasad*** *Vs.* ***State of Bihar*** (AIR 1971 SC 1409), it was contended that pension is neither a bounty nor a matter of grace, but a valuable statutory right accruing to a government servant. Reference was also made to ***Dharamvir Singh*** *Vs.* ***Union of India and others*** (AIR 2013 SCW 4236) and ***Union of India and others*** *Vs.* ***Rajbir*** (Civil

Appeal No. 2904 of 2011) to contend that the question whether a disability is attributable to or aggravated by military service is required to be examined in the light of the Entitlement Rules for Casualty Pensionary Awards, 1982 and the Guide to Medical Officers (Military Pensions), 2002. It was further urged that as recognised in ***Dharamvir Singh*** (supra), where a member of the Armed Forces is discharged or released from service on account of a medical condition, the disability is ordinarily to be presumed as having arisen during service and attributable to or aggravated by military service, unless the Medical Board records cogent reasons to the contrary. The learned counsel submitted that this principle equally applies where an individual retires on attaining the age of superannuation or on completion of the prescribed tenure, provided the disability is found to have a nexus with military service. It was also contended that in such circumstances, the applicant would be entitled to the benefit of rounding off of disability pension in accordance with the prevailing legal position. In support of this submission, reliance was placed on the decisions of this Tribunal in ***Nakhat Bharti*** *Vs.* ***Union of India and others*** (TA No. 48 of 2009 in WP (C) No. 6324 of 2007) and ***Krishna Singh*** *Vs.* ***Union of India and others*** (TA No. 208 of 2010 in WP (C) No. 9764 of 2009). On the aforesaid premises, learned

counsel for the applicant submitted that the rejection of the claim for disability pension is unsustainable and the applicant is entitled to the reliefs sought.

6. While reiterating the factual matrix already examined, it emerges from the stand of the respondents that the claim of the applicant does not satisfy the statutory requirements governing grant of disability pension. Rule 153 of the Pension Regulations for the Indian Air Force, 1961 (Part-I) prescribes two mandatory and cumulative conditions for such entitlement, namely: (i) the individual must be invalided out of service on account of a disability which is attributable to or aggravated by Air Force service; and (ii) the disability must be assessed at 20% or above. Absence of either condition is sufficient to disentitle an individual from the disability element of pension. In the present case, the individual was not invalided out of service instead was discharged on completion of his term of engagement. The RMB, upon due medical evaluation, recorded two disabilities. The first disability was held to be attributable to service but assessed at below 20%, while the second was categorically opined to be neither attributable to nor aggravated by Air Force service. On the conjoint application of Rule 153, the applicant thus fails to fulfil the essential criteria for grant of disability pension.

Consequently, once the basic entitlement itself is not established, the issue of rounding off or broad banding of the disability percentage does not arise for consideration.

7. The respondents have also drawn our attention to the policy framework issued by the Government of India, Ministry of Defence, particularly the letter dated 29th July, 2017, which permits implementation of judicial orders in cases involving "neither attributable nor aggravated" disabilities only where such relief has been specifically granted by a competent court or tribunal, keeping in view the principles laid down by the Hon'ble Supreme Court in ***Dharamvir Singh*** *(supra)* which was for invalided out cases. Similarly, the policy letter dated 18th April, 2016 relates to implementation of court or AFT orders granting broad banding in cases where personnel retired or were discharged with disabilities attributable to or aggravated by service. These policy communications, however, do not confer an independent or automatic right and are clearly contingent upon a prior judicial determination in favour of the individual, which is absent in the present case. Further, the factual circumstances surrounding the injury have been placed on record. It is noted that on 2nd November, 2015, while proceeding on leave, the applicant sustained an injury due to a fall while

boarding a train. Clinical examination of the right knee revealed no swelling, tenderness or deformity, with full, free and painless range of motion and no neurovascular deficit. Certain clinical tests indicated Grade-I ACL laxity with mild quadriceps wasting, while other ligamentous structures were found to be intact. The applicant was accordingly recommended to continue in low medical category A4G2 (Permanent). Subsequent imaging findings showed a near-complete tear of the anterior cruciate ligament at its femoral attachment along with bony contusions of the lateral femoral condyle and posterior aspects of both tibial condyles. The menisci, posterior cruciate ligament, collateral ligaments, surrounding musculature, articular cartilage and neurovascular bundles were all reported as normal, with only minimal joint effusion noted. On the basis of these findings, the medical authorities formed their opinion regarding attributability and degree of disablement, which was duly reflected in the RMB proceedings. In view of the statutory provisions, the medical assessment on record and the applicable policy instructions, the respondents contend that the applicant does not qualify for grant of disability element of pension. The OA, therefore, lacks merit and is liable to be dismissed with costs.

8. Having heard the learned counsel for the parties and perused the documents, including the medical documents, we have come to the following findings:

9. For an individual to be entitled to the grant of disability pension, two essential and cumulative conditions need to be satisfied, namely, (i) the individual must have been invalided out or discharged from service on medical grounds on account of a disability; and (ii) such disability must be attributable to or aggravated by military service and assessed minimum at 20%. Failure to satisfy either of the above conditions disentitles an individual from the grant of disability pension. In the case at hand, the applicant was not invalided out of service or discharged on medical grounds but was discharged from service on attaining the age of superannuation, hence the only case which can be made out is that of disability element in case he is entitled for the same along with the service pension which he is already entitled to and drawing.

10. With regard to ID Undisplaced Fracture of the Lateral Tibial Condyle (Right), the RMB has categorically opined that the disability is neither attributable to nor aggravated by Air Force service. This finding has not been shown to suffer from any legal or factual infirmity. There is no material on record to establish a

causal connection between military service and the onset or aggravation of this disability. It is worthwhile to note that while proceeding on leave and boarding the train because of his carelessness the applicant fell down and suffered this disability of Undisplaced Fracture of the Lateral Tibial Condyle (Right), which in no way can be said to be attributable to service or has any causal connection with service. Thus in view of the clear finding that ID Undisplaced Fracture of the Lateral Tibial Condyle (Right) is neither attributable to nor aggravated by service, the applicant fails to satisfy the first mandatory condition under Rule 153 itself. Therefore, irrespective of the percentage of disability, no disability element of pension can be granted in respect of ID Undisplaced Fracture of the Lateral Tibial Condyle (Right).

11. While examining the cases of the applicant for disability element with respect of ID ACL Tear (Right), the RMB has assessed the disability as attributable to service, but has quantified the degree of disablement at 10–11%, i.e. below the minimum threshold of 20% prescribed under the Pension Regulations hence there is no case made out for disability element for this ID. However, the applicant has contended that in this case the disability should minimum be 30% because as per GMO Ankylosing Spondylitis should be 30%. This contention is found to

be wholly untenable. Ankylosing Spondylitis is a distinct systemic inflammatory disease affecting the axial skeleton, whereas the applicant's disability has been diagnosed as residuals of an ACL tear, a localized orthopedic condition. There is no medical evidence, diagnostic finding or opinion on record to suggest either the presence of Ankylosing Spondylitis or that ACL tear is same/similar to Ankylosing Spondylitis. The attempt to equate the applicant's condition with a different disease entity, solely for the purpose of claiming a higher disability percentage, is impermissible in law. Further, the medical evidence on record indicates that the disabilities suffered by the applicant are of temporary nature, amenable to treatment and do not constitute permanent disablement of the requisite degree so as to satisfy the statutory threshold. Consequently, the applicant fails to meet the foundational conditions necessary for grant of disability element under the applicable regulations.

12. Further, Para 4(b) of Chapter V of the *Guide to Medical Officers (Military Pension), 2002* provides that where the Medical Board certifies that the suggested medical treatment would cure or reduce the disability and the individual refuses to undergo such treatment, he shall not be entitled to the disability

element of pension, though normal service pension or gratuity may be admissible.

13. In the present case, the medical records reveal that the Medical Board had advised Arthroscopy for diagnosis and treatment of ACL injury of the right knee, which was a minimally invasive, low-risk procedure with a high likelihood of reducing the disability. Despite repeated medical advice since 2018, the applicant refused to undergo the prescribed procedure, as evidenced by the unwillingness certificate on record. Such refusal, in the facts of the case, cannot be held to be reasonable.

14. Also the assessment of the nature and degree of disability falls squarely within the domain of expert medical authorities. In the absence of any cogent material to demonstrate perversity, arbitrariness or procedural irregularity in the medical assessment, we find no justification to interfere with the percentage assessed by the RMB. Since disability of ACL Tear (Right), though attributable to service, is assessed at less than 20%, one of the mandatory statutory conditions remains unfulfilled. Consequently, no entitlement to disability element arises in respect of disability of ACL Tear (Right).

15. The law on entitlement to disability pension where the assessed disability is below 20% is well settled. The Hon'ble

Supreme Court in ***Union of India and Ors.*** *Vs.* ***Wing Commander S.P. Rathore*** [Civil Appeal No. 10870 of 2018, decided on 11th December, 2019] has categorically held that the disability element is not admissible if the disability is assessed at less than 20% and consequently the principle of rounding-off would also not apply. The Court clarified that rounding-off presupposes entitlement and in the absence of entitlement to disability pension, no question of rounding-off arises.

16. The issue as to whether a disability assessed at a negligible percentage can be notionally treated as 20% has also been examined by this Tribunal in ***Sgt. Vijay Prakash (Retd.)*** *Vs.* ***Union of India and Ors.*** [O.A. No. 2200 of 2021, decided on 13th October, 2022], wherein, after considering the relevant judgments of the Hon'ble Supreme Court and applicable policy provisions, the claim for disability pension was rejected as the assessed disability was below the prescribed threshold of 20%.

17. In view of the foregoing discussion, we hold that the disability of ACL Tear (Right), though attributable to service, is assessed at less than 20% and, therefore, does not meet the statutory threshold for grant of disability pension; and disability of Undisplaced Fracture of the Lateral Tibial Condyle (Right) is neither attributable to nor aggravated by Air Force service has no

causal connection with service and hence is statutorily excluded from consideration for disability pension. Accordingly, the applicant is not entitled to disability element of pension in respect of either of the two disabilities.

18. The OA being devoid of merit is liable to be dismissed, hence dismissed.

19. No order as to costs.

Pronounced in open Court of this 22nd day of January, 2026.

[JUSTICE NANDITA DUBEY]
MEMBER (J)

[RASIKA CHAUBE]
MEMBER (A)

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