

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

OA No. 1407/2019

Ex Sgt Amit Kumar Pandey ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Mr. Ajit Kakkar with
Ms. Shruti, Advocates

For Respondents : Mr. Neeraj, Sr. CGSC
Sgt P K Yadav, DAV In-charge,
Legal Cell

CORAM :

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

O R D E R

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

- "(a) To direct the respondents to produce all medical records of the applicant.***
- (b) To direct the respondent to grant disability pension to the applicant from the date of discharge.***
- (c) To direct the respondents to grant broad banding of disability pension from 20% to 50%.***
- (d) To direct the respondents to issue a corrigendum PPO with the necessary changes pertaining to the disability and broad banding of the disability pension.***

- (e) To direct the respondents to pay arrears of disability pension and broad banded disability pension along with interest @12%.**
(f) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.”

BRIEF FACTS

2. The applicant was enrolled in the Indian Air Force on 23.03.1998 and was discharged from the Air Force service on 31.03.2018 under the clause “On fulfilling the conditions of his enrolment” after rendering 19 years and 357 days of regular service (excluding 08 days NQP). The applicant was placed in Low Medical Category (LMC) A4G4 (T24) for ID- **Prolapsed Inter Vertebral Disc (PIVD) L4-L5** vide AFMSG-15 dated 31.10.2016. Subsequently, he was placed in LMC A4G3 (P) vide AFMSF-15 dated 12.09.2017.

3. The applicant’s Release Medical Board (not solely on medical grounds) was held at 5 FBSU, Air Force vide AFMSF-16 dated 18.01.1978 which found him to be released in Low Medical Category A4G3(P) for ID PIVD L4-L5. The RMB considered his disability as neither attributable to nor aggravated (NANA) by the Air Force service while assessing the percentage of disablement @20% for life long. The finding of the RMB was approved by the PMO HQ SWAC,

Indian Air Force (IAF) dated 05.12.2017. The AOC AFRO upheld the recommendations of the RMB and rejected the disability pension claim vide letter No. RO/3305/3 Med dated 13.03.2018. The outcome was also communicated to the Air Veteran vide letter No. Air HQ/99798/1/777147/03/DAV/DP/RMB dated 12.07.2018 with an advice that he may prefer an appeal to the Appellate Committee within six months from the date of the receipt of the letter.

4. The applicant preferred first appeal for the grant of disability pension on 05.02.2019 which is presently pending for consideration before the Appellate Committee. No response has been communicated by the respondents to the applicant. However, in the interest of justice, in terms of Section 21(1) of the AFT Act, 2007 we deem it appropriate to take up the OA for consideration.

CONTENTION OF THE PARTIES

5. Learned counsel for the applicant submitted that, at the time of enrolment, the applicant was declared physically and medically fit and was not suffering from any disability.

6. It was further submitted that the disability arose while the applicant was serving in the Indian Air Force and was attributable to, and/or aggravated by, the conditions of his service, including adverse environmental factors, strenuous duties, and injuries sustained during various postings. Owing to such rigorous service conditions, the applicant was diagnosed with PIVD L4-L5 (Old), ICD-M51.0. Accordingly, it is contended that the said disability is attributable to and aggravated by military service.

7. The learned counsel for the applicant placed reliance on the judgments of the Armed Forces Tribunal, Regional Bench, Lucknow in OA 314/2017 **Ex SGT Ram Khelawan vs. Union of India & Ors.**

8. In this regard reliance was placed on the judgments of the Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India & Ors. [(2013) 7 SCC 316]**, which has been considered and taken note of by the Hon'ble Apex Court in many judgments including **Union of India & Ors. vs. Rajbir Singh (2015) 12 SCC 264** and various order of the Tribunal, wherein the Hon'ble Supreme Court had considered the question with regard to grant of disability

pension and after taking note of the provision of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Service of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions.

9. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disability from which the incumbent is suffering is neither attributable to nor aggravated by military service.

10. *Per contra*, learned counsel for the respondents, in the counter affidavit, submitted that the disability of the applicant have been considered as neither attributable to nor aggravated by Air Force service, by the RMB, which is an

export body, and thus the applicant is not entitled for grant of disability element of pension.

11. It is the avowed contention of the respondents that in terms of Regulation-153 of the Pension Regulations for the IAF, 1961(Part-I), 1), the primary conditions for the grant of disability pension are:-

“Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by Air Force service and is assessed at 20% or over.”

In other words, the respondents contend that the disability pension is granted to those who fulfill the following two criteria simultaneously:-

***“(i) Disability must be either attributable to or aggravated by service.
(ii) Degree of disablement should be assessed at 20% or more.”***

and thus it was submitted on behalf of the respondents that the RMB assessed his disability as neither attributable to nor aggravated by the Air Force services that caused non-fulfillment of the criteria (i) as above. Hence, he is not entitled for grant of disability pension in accordance with

prevailing rules & policies. Thus, the learned counsel for the respondents prayed that the OA may be dismissed.

ANALYSIS

12. We have heard the learned counsel for the parties and have perused the record.

13. The applicant's disability **ID- Prolapsed Inter Vertebral Disc (PIVD) L4-L5** has been assessed by the RMB @20% for life and considered the same as neither attributable to nor aggravated by service for the reason that the disability of the applicant is not post traumatic low backache and the RMB has also opined that the applicant was immediately brought to medical attention on onset of symptoms. He was later categorized and given sheltered employment. There is no close time association with exceptional stress and strain of service hence nor attributable to nor aggravated by service as per Para 51 of Chapter VI of GMO.

14. It is not in dispute that at the time of joining the Indian Air Force, the applicant was found medically and physically fit, and the disability under consideration was detected during service in January 2007 at Suratgarh. It is

also not controverted that at the time of discharge from service on 31.03.2018, the applicant was placed in low medical category A4G3 (P).

15. The applicant's posting profile indicates that he was posted at Suratgarh with 23 Squadron from 01.11.2004 to 29.10.2007, which is classified as a modified field area. It was during this tenure that the applicant's disability originated. Further, as already observed, it is well settled through a catena of orders of this Tribunal that the stress and strain experienced by Armed Forces personnel due to varying climatic and geographical conditions, rigorous military training, and demanding military duties are factors that trigger such stress and strain, often resulting in low backache caused by PIVD.

16. The law on the issue of attributability/aggravation of a disability is already settled by the Hon'ble Supreme Court in the case of **Dharamvir Singh Vs. Union of India [(2013) 7 SCC 316]**, which has been followed in subsequent decisions of the Hon'ble Supreme Court and in a catena of orders of this Tribunal, wherein the Hon'ble Apex Court had considered the question with regard to grant of disability

pension and after taking note of the provisions of the Pension Regulations, Entitlement Rules and the General Rules of Guidance to Medical Officers and Para 423 of the Regulations for the Medical Services of the Armed Forces, it was held by the Hon'ble Supreme Court that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. The Apex Court further held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is neither attributable to nor aggravated by military service.

17. As regards the disability PIVD which cause low backache, Para 51 of Chapter VI of the GMO (Military Pensions) 2008 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.”

18. From the above, it is clear that the low backache caused by PIVD is to be conceded aggravated due to stress and strain of service. The applicant was detected with the disability PIVD L4-L5 in January, 2007, and even after having diagnosed with the said disability, the applicant continued to perform military duties till the date of his retirement in March, 2018 and thus the disability of the applicant can be said to have been aggravated by the military service. In the present case, although the disability was noted when the applicant was posted in a modified field area, the probability that earlier military service for a long period in different parts of the country, with varying and difficult geographical and environmental conditions,

contributed to mental as well as physical stress and strain resulting in PIVD cannot be overlooked.

19. Moreover, it has already been observed by the Tribunal in large number of cases that peace stations have their own pressure of rigorous military training and associated stress and strain of the service and in the instant case, the applicant was in peace stations as well as modified field areas. It may also be taken into consideration that the most of the personnel of the Armed forces live without their family, work in the stressful and hostile environment, difficult weather conditions and under strict disciplinary norms. Admittedly, the applicant was enrolled in March, 1998 and the disability (PIVD) has occurred in January, 2007 i.e. after more than 9 years of service and the applicant was discharged from service on 31.03.2018 in low medical category A4G3 (P). Therefore, we are of the considered view that the benefit of doubt in these circumstances should be given to the applicant and in view of the settled law on the point of attributability and/or aggravation, we hold that the disability suffered by the applicant i.e. 'PIVD' as attributable to and aggravated by the military service. Hence, the

applicant is entitled to disability element of pension in respect of the disability **ID- Prolapsed Inter Vertebral Disc (PIVD) L4-L5** along with benefit of rounding off in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Ram Avtar (Civil Appeal No. 418/2012)**.

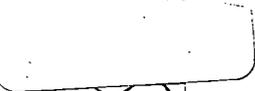
20. In view of the aforesaid judicial pronouncements and the parameters referred to above, the applicant is held entitled for the disability element of pension in respect of the disability **ID- Prolapsed Inter Vertebral Disc (PIVD) L4-L5** PIVD @ 20% for life rounded off to 50% for life. However, as the applicant approached the Tribunal after a considerable delay, in view of the law laid down by the Hon'ble Apex Court in **Tarsem Singh's case (supra)**, arrears will be restricted to three years prior to the date of filing of this OA i.e. 19.08.2019.

21. In view of the above, OA 1407 of 2019 is allowed.

22. Accordingly, the respondents are directed to calculate, sanction and issue necessary PPO to the applicant within three months from the date of receipt of copy of this order,

failing which, the applicant shall be entitled to interest @ 6% per annum till the date of payment.

Pronounced in the open Court on the 17th day of March, 2026.



[RASIKA CHAUBE]
MEMBER (A)


[JUSTICE NANDITA DUBEY]
MEMBER (J)

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