

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

OA 171/2020

Ex Sgt Maheshwar Behera	...	Applicant
Versus		
Union of India and Ors.	...	Respondents

For Applicant	:	Mr. Ajit Kakkar, Advocate, Ms. Alpana Yadav, Advocate and Ms. Madhuri Koli, Advocate
For Respondents	:	Mr. K.K. Tyagi, Sr. CGSC

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 filed this OA praying for following reliefs:

- (a) *To direct the respondents to bring all medical records of the applicant including medical board held after he was disabled.*
- (b) *To set aside the letter dated 12.04.2019 by the respondents rejecting the disability pension of the applicant.*
- (c) *To set aside the RMB reducing his pension from 20% to 10%.*
- (d) *To direct the Respondents to grant disability pension to the applicant from the date of discharge i.e. 01.06.2018.*
- (e) *To direct the respondents to grant broad banding of the disability pension from 01.06.2018.*
- (f) *To direct the respondents to issue a corrigendum PPO pertaining to the disability pension and broad banding of the disability pension of the applicant.*
- (g) *To direct the respondents to pay arrears of disability pension and broad banded disability pension along with interest @12% from the date of discharge i.e. 01.06.2018.*
- (h) *To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.*

BRIEF FACTS OF THE CASE

2. The applicant was enrolled in the Indian Air Force on 07.05.1998 and discharged on 31.05.2018 after serving for approximately 20 years of qualifying service. The Release Medical Board dated 17.08.2017 held that the applicant was fit to be discharged from service in low medical category A4G4(P) for the disability - PIVD @ 10% for life, and held as 'Neither Attributable Nor Aggravated' by service.

3. The claim of the applicant for grant of disability pension was rejected vide letter no. RO/3305/3/Med dated 11.02.2019, and the same was communicated to the applicant vide letter no. Air HQ/99798/1/774978/ 05/8/DAV (DP/RMB) dated 12.04.2019. Against the aforesaid rejection, a first appeal was preferred by the applicant vide letter dated 02.07.2019, wherein vide DGAFMS sanction letter No.16050/AMB/DGAFMS/MA (Pension) dated 20.02.2020, sanction was granted for conduct of Appeal Medical Board in respect of applicant, following which a First Appeal Medical Board was constituted vide letter dated Air HQ/99801/774978/5/DAV (Med) dated 06.11.2020.

4. In compliance of the aforesaid, a BHDC letter No.1234/MB/Appeal/ 20/2020 dated 20.11.2020 was addressed to applicant wherein he was directed to appear before the Appeal Medical Board for review of disability. In response to the above said letter, applicant

addressed a personal application dated 18.01.2021 stating that he is unwilling to appear for Appeal Medical Board, whereinafter vide letter dated 1234/MB/Appeal/29/2020 dated 03.02.2021, first appeal was returned unactioned to the DAV, Air HQ. However, even before the sanction could be granted for conduct of Appeal Medical Board vide DGAFMS letter dated 20.02.2020, applicant has already filed an OA before this Tribunal on 17.01.2020, wherein vide our order dated 24.02.2020, the OA was admitted under Section 21(2) of the AFT Act, since the first appeal has not been disposed off within the mandatory period of 6 months and the notice was issued to the respondents and accepted by the Ld. Counsel for the respondents. Thus, we now take up this OA for consideration.

SUBMISSIONS ON BEHALF OF APPLICANT

5. Placing reliance on the judgement of the Hon'ble Supreme Court in *Dharamvir Singh v. UOI & Ors [2013 (7) SCC 36]*, Learned Counsel for applicant argues 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 Air Force at various places in different environmental and service conditions in his prolonged service, thereby, any disability at the time of his service is deemed to be attributable to or aggravated by military service.

6. It is the contention of the applicant that while the Annual Medical Boards have previously assessed the disability of the applicant @20%, but

the Release Medical Board in disregard to the Annual Medical Board assessed the disability @10%, whereas the disability has restricted the movement of the applicant, and the claim of the disability pension has been denied on frivolous grounds.

SUBMISSIONS ON BEHALF OF RESPONDENTS

7. Per Contra, Learned Counsel for the Respondents submits that under the provisions of Para 153 of the Pension Regulations for the Army, 2008, the primary condition for the grant of disability pension is invalidation out of service on account of a disability which is attributable to or aggravated by Air Force service and is assessed @ 20% or more.

8. Relying on the aforesaid provision, Learned Counsel for respondents further submits that the aforesaid disability of the applicant was assessed less than 20% and held as ‘neither attributable nor aggravated by Air Force service and as such, his claim was rejected; thus, the applicant is not entitled for grant of disability pension due to policy constraints.

CONSIDERATION

9. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that it is not in dispute that the disability was held to be ‘not attributable nor aggravated’ by Air Force service and the extent of disability was initially assessed to be 10% which is less than bare minimum for grant of disability pension in terms of Regulation 153 of the Pension Regulations for the Air Force, 1961. However,

from the perusal of Release Medical Board, we find that the issue involves reduction of assessment of the disability of the applicant by 50% due to unwillingness for surgery. Now, the only question that arises in the above backdrop is whether the assessment of disability, reduced from 20% to 10% in composite assessment, probably due to refusal of the applicant to undergo operation, is justified or not in the instant case?

10. On the perusal of medical records, we find that the answer to the question whether the individual has refused to undergo operation/treatment is in affirmative. With respect to the question whether such refusal to undergo operation/surgery is reasonable and whether the reduction of %age on ground of such refusal is reasonable or not, we find that the issue has been dealt exhaustively by a coordinate bench of this Tribunal in ***Ex Sgt Praveen Semwal v. Union of India & Ors. [OA 1595/2017]***, wherein relying upon DGAfMS, MoD letter No. 16036/RMB/IMB/DGAfMS/MA (Pension) dated 16.04.2019 clarifying that refusal to undergo surgery for spinal disorders (e.g., PIVD) should not be a reason to reduce disability percentage, this Tribunal has held that unwillingness for spinal surgery is not valid ground to reduce disability percentage given reservations and complications associated with spinal operations.

11. Thus, adverting to the DGAfMS letter dated 16.04.2019, which elucidates that declination of surgical intervention for spinal ailments such as PIVD ought not impinge upon the disability quantum, the Tribunal has

discountenanced any diminution of the assessed percentage on grounds of surgical reluctance, whereinafter the issue has been squarely settled in *Ex Sgt Praveen Semwal (supra)*.

12. Now, with respect to the attributability and aggravation, we find it essential to advert to Para 51 of Chapter VI of Guide to Medical Officers (Military Pensions), 2002 (as amended in 2008), reproduced as under:

51. Low backache. Low backache is a clinical entity which is characterized 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.

13. A perusal of the aforesaid para makes it clear PIVD is categorized as a distinct clinical cause of low backache, potentially manifesting with associated sciatica and neurological deficits, alongside other etiologies such as musculofascial strain, lumbar spondylosis, and trauma. Unlike post-traumatic low backache- explicitly deemed attributable to military service, PIVD falls under the residual "other cases" where aggravation due to the stress and strain of service must be conceded, thus, mandating service aggravation for PIVD in non-traumatic scenarios, aligning with entitlement

rules presuming deterioration in health during service as service-induced unless proven otherwise.

14. It is, therefore, clear from the understanding of the relevant Para 51 of the Guide to Medical Officers (GMO), 2002 (as amended in 2008) that Prolapsed Intervertebral Disc (PIVD) could not have been classified as 'Neither Attributable to nor Aggravated by' (NANA) service by the Release Medical Board, since such determination stands in blatant defiance of the explicit guidelines enshrined therein, predicated solely on the applicant's sheltered employment post-onset of the ailment, whilst wholly disregarding the uncontroverted position that the applicant had been functioning in the Clk GD Trade for nearly eight years since the inception of the disability. These clerical duties, entailing protracted periods of standing and sitting, for which medical excusal had been granted by the Board, indubitably constitute a material contributing factor to the aggravation of PIVD, thereby warranting due acknowledgement in the entitlement assessment.

15. In view of the aforesaid analysis, we are of the considered opinion that the applicant is entitled to disability pension on account of disability being assessed @20% as "aggravated by Air Force service". Regarding broadbanding benefits, we find that the *Hon'ble Supreme Court in its order dated 10.12.2014 in Union of India v. Ram Avtar, Civil Appeal No. 418 of 2012* and connected cases, has observed that individuals similarly placed as the applicant are entitled to rounding off the disability element of pension.

We also find that the Government of India vide its Letter No. F.No.3(11)2010-D (Pen/Legal) Pt V, Ministry of Defence dated 18th April 2016 has issued instructions for implementation of the Hon'ble Supreme Court order dated 10.12.2014 (supra).

16. Therefore, the OA 171/2020 is allowed and Respondents are directed to *grant benefit of disability element of pension compositely @ 20% for life* (for PIVD @20% for life), *rounded off to 50% in view of judgement of Hon'ble Apex Court in Union of India versus Ram Avtar (supra) from the date of discharge i.e. 31.05.2018*. The arrears shall be disbursed to the applicant within four months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment.

17. Consequently, the O.A. 171/2020 is allowed.

18. No order as to costs.

Pronounced in the open Court on 28th day of January, 2026.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

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

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