

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

**OA 1840/2019**

**Ex POM Monu (135433-B) ... Applicant**

**Versus**

**Union of India & Others .... Respondents**

**For Applicant : Mr. Ajit Kakkar, Advocate**

**For Respondents : Mr. Vijendra Singh, Advocate**

**CORAM:**

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

**HON'BLE MS. RASIKA CHAUBE, MEMBER (A)**

**ORDER**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 are read as under:

***"(a) To direct the respondents to bring all relevant medical papers on record.***

***(b) To direct the Respondent to grant disability pension to the Applicant from the date of discharge that is 01.02.2018.***

***(c) To direct the respondent to grant the benefit of rounding off the disability pension from 30% to 50% from date of discharge.***

***(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 Navy on 30.01.2003 and discharged from service on 31.01.2018 on expiry of engagement with 15 years and 2 days of qualifying service. Subsequently, he was sanctioned Service Pension vide PPO No. 248201801740 dated 07.03.2018. The applicant was placed was in low medical category S2A2(P) PMT for the disability '**Cough Variant Asthma ICD No. J 45**'. The Release Medical Board had assessed the disability as "Not Attributable to, but Aggravated by the service" with assessment of 15-19% vide Para 5, Chapter VI of GMO, 2008. The net assessment qualifying for disability pension is recorded as NIL% for life. Therefore, the disability element vide letter No. PEN/600/D/LRDO/1:01/2018/135433B dated 13.02.2018

and he was advised to prefer an appeal against the rejection of disability pension within 06 months from the date of receipt of the rejection letter.

3. The applicant preferred First Appeal dated 22.02.2019, which was rejected by DPA(N), New Delhi vide letter No. PN/0134/DP/1296/19 dated 06.12.2019 with an option to prefer a second appeal and final appeal within six months from the rejection of said letter. Aggrieved by this, the applicant approached this Tribunal and has filed the present OA on 10.10.2019. In the interest of justice, it is considered appropriate to take up the present OA for consideration, in terms of Section 21(2)(b) of the AFT, Act 2007.

#### **CONTENTIONS OF THE PARTIES**

4. The learned counsel for the applicant submitted that at the time of enrolment, the applicant was declared medically fit and was not suffering from any disability.

5. It was further submitted that the disability arose while the applicant was serving in the Indian Navy and was aggravated by naval service, the conditions of his service,

including adverse various environmental factors, strenuous duties. Owing to such rigorous service conditions, the applicant was diagnosed with COUGH VARIANT ASTHMA, ICD No. J 45. It is further submitted that the applicant was continued serving the country with same vigour and dedication despite his disability which has actually aggravated the medical condition of the applicant. According to the RMB held on 11.10.2017, the said disability is not attributable but aggravated by service and assessed @30% for life. It is urged that despite assessing the disability @30% and aggravated by service condition, the respondents have maliciously denied him the benefit of disability pension.

6. *Per contra*, the learned counsel for the respondents, in the counter affidavit, submitted that the disability of the applicant namely 'Cough Variant Asthma ICD No. J 45' assessed @15-19% as aggravated by service vide Para 5 Chapter VI of the GMO, 2008. It is stated that as a general practice, copy of the approved RMB proceedings are sent to individual concerned, the same is annexed to as Annexure R-1

with the counter affidavit. It is pointed out that the copy of the RMB filed as Annexure A-2 with the OA is not approved proceedings. It is admitted that initially the disability was assessed @30%, however, the approving authority after has reduced the percentage to 15-19%. However, the rejection was based on the findings that the applicant is not entitled to the disability pension in terms of Regulation 100 of Navy (Pension) Regulations 1964. Hence, his claim for the grant of disability was rejected by the competent authority and thus the applicant is not entitled to the grant of disability pension.

### **ANALYSIS**

7. Having heard the learned counsel for the parties and on perusal of record, we are of the opinion that this OA deserves to be allowed.

8. It is an undisputed fact that at the time of joining the service in January, 2003, the applicant was found medically and physically fit and the present disability had admittedly occurred in January, 2016, i.e. after about 13 years of service.

9. It is also not in dispute that the present disability of the applicant i.e. 'Cough Variant Asthma ICD No. J 45' has been conceded as 'Aggravated by service' by the Release Medical Board dated 11.10.2017 with the reasons for assessment being 'Aggravated' mentioned vide Para 5, Chapter VI of GMO, 2008. The same is reproduced to the effect :-

Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Not Connected with service (Y/N)	Detailed justification
Cough Variant Asthma ICD No. J 45	NO	<b>YES</b>	<b>No, Connected with service.</b>	The disability aggravated by vide Para -5, Chapter VI, GMO (MP) 2008.

10. The only issue in the instant case is regarding assessment of percentage of disablement.

11. It is an admitted fact that the copy of the RMB submitted with OA is sent by the respondents to the applicant. A perusal of the internal page 5 of Annexure A-2 shows the assessment of percentage @30%. This copy is signed by the three Medical Board members on 17.10.2017 as evident from internal page 6. This however, does not bear the signature of the approving

authority. Whereas, Annexure R-1, produced by the respondents shows reduced percentage of disability as 15-19% interestingly, this is also signed on same day i.e.17.10.2017 by the said three Medical Board Members. However, in addition bears the signature of Approving Authority (Snr. Staff Officer for Flag Officer Commander) dated Feb, 2018 i.e. after four months from date of RMB and after date of discharge of the applicant i.e. 31.01.2018. This makes it evident that the internal page 5 was changed later on after the applicant was discharged.

12. It is clarified by the respondents that, after the Medical Board is duly constituted, the individual is medically examined in accordance with the established procedure and a proceedings report is prepared. This report is then forwarded to the approving authority who normally approves it within a month. Upon examination, the approving authority may either approve the report or, if certain findings are not in accordance with the prescribed policy, return it to the Medical Board with observations. Thereafter, the Medical Board considers the

observations, makes the necessary changes, and resubmits the amended proceedings to the approving authority. In this case, it seems that the disability percentage was amended/reduced even before sending it to the Approving Authority as it bears the same dated 17.10.2017. Once approved, the report is forwarded to the confirmation authority and thereafter to the accepting authority.

13. From the aforesaid, it is clear that the copy of the RMB produced by the applicant along with the OA is initially sent by the respondents after the Medical Board had signed the same but before it was sent for approval to the Approving Authority. However, the RMB proceedings produced by the respondents reflect the amended report, as revised by the Medical Board stated to be in accordance with the directions of the approving authority.

14. Be that as it may, as per GMO, 2008, the minimum assessment of the disability '**Cough Variant Asthma ICD No. J 45**' is 20% to 40%. Under the circumstances, the 15-19%

assessed by the respondents and the direction of the approving authority does not seem correct as once it was assessed by the Medical Board @30%, it is not clear using which criteria the same was reduced to 15-19%. As the disability is conceded as aggravated by the service, and the minimum percentage of assessment as per GMO, 2008 is 20%. We observed that the percentage of disability assessed by the Medical Board was correct as it was done after physically examining the applicant. We therefore held that the applicant is entitled for grant of disability element of pension in respect of **'Cough Variant Asthma ICD No. J 45'**.

### **CONCLUSION**

15. In view of the aforesaid, OA 1840/2019 is allowed. The respondents are thus directed to grant disability element of pension to the applicant @ 30% for life which be rounded off to 50% for life with effect from the date of his discharge in terms of the judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India Through Its Secretary & Ors. vs. Sgt Girish Kumar & Ors. etc.** (Civil Appeal No. 6820-6824 of



2018) and **Union of India Vs. Ram Avtar** (Civil Appeal No. 418/2012), decided on 10.12.2014.

16. 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.

17. There is no order as to costs.

Pronounced in open Court on this 2<sup>nd</sup> day of

April, 2026.

  
  
**[RASIKA CHAUBE]**  
**MEMBER (A)**

  
**[JUSTICE NANDITA DUBEY]**  
**MEMBER (J)**

/Yogita/