

**COURT NO. 1**  
**ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**OA 2917/2022**

**Captain (TS) Srinivas Reddy (Retd) ... Applicant**

**Versus**

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

**For Applicant : Mr. Shakti Chand Jaidwal, Advocate**

**For Respondents : Ms. Jyotsana Kaushik, Advocate**

**CORAM :**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

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) Set aside the impugned order dated 06.09.2022 passed by the Respondent, rejecting second and final appeal of the Applicant for grant of disability pension;***  
***(b) Direct the Respondents to accept Applicant's disability, namely "ID OSTEOARTHRITIS B/L ANKLE (M-0.9)" as "Aggravated by Service" as recommended by the Release Medical Board.***  
***(c) Direct the Respondents to grant disability pension to the Applicant @ 20% for life w.e.f. 01.04.2021, as degree of his disablement has been assessed @ 20% for life by the RMB.***  
***(d) Direct the Respondents to pay disability pension to the Applicant at enhanced rate of 50 % for life from the date of his retirement i.e. 01.04.2021 by board-banding his***

**disabilities from 20% to 50% as per Govt. Policy dated 31.01.2001;**

**(e) Direct the Respondents to pay to the Applicant an interest @ 10% p.a. on the arrears of disability pension w.e.f. 01.05.2021 till the actual payment of the same and/ or.**

**(f) Issue such order(s)/direction(s) as may be deemed appropriate in the facts and circumstances of the case.**

### **BRIEF FACTS**

2. The applicant was commissioned in the Indian Navy on 16.08.1988 and retired from the service on 31.03.2021 under the clause of "On attaining the age of superannuation" after rendering total 32 years, 07 months and 16 days of regular service. The Release Medical Board held on 02.01.2021 found the applicant fit to be released from service in low medical category S2A2(P) Pmt and assessed the disabilities of (i) Osteoarthritis Bi-Lateral Ankle (ICD M-0.9) @ 20% for life and the same disability was conceded to be 'Aggravated by military service' by the Release Medical Board. However, the applicant was not granted the disability pension.

3. The initial claim of the applicant for grant of the disability pension was rejected by the IHQ of MoD (Navy) vide letter No. PN/8060/DP/21 dated 06.08.2021 with an advice that in case, the applicant is not satisfied with the

decision of the respondents, he may prefer an appeal to the Appellate Committee within six months from the date of receipt of the above mentioned letter. The applicant preferred his first appeal dated 30.10.2021 against rejection of initial claim grant of disability pension, which was also rejected by the Appellate Committee on First Appeal (ACFA) vide letter No. PN/8060/DP/21 dated 17.01.2022 with an advice that in case, the applicant is not satisfied with the decision of the respondents, he may prefer second appeal to the Second Appellate Committee within six months from the date of issue of the above mentioned letter. The applicant preferred his second appeal dated 06.03.2022 but the same was also rejected by the Competent Authority vide letter No. PN/8060/DP/21 dated 06.09.2022. Aggrieved by the rejection of his claim, the applicant has filed the present OA on 08.12.2022. 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 Armed Forces Tribunal Act 2007.

## **CONTENTIONS OF THE PARTIES**

4. The learned counsel for the applicant submitted that the applicant, at the time of joining the service, was declared fully fit mentally and physically and no note of disability was made in his medical record at the time of entering the service and any medical disability contracted by him during the course of his service should be treated as being attributable and aggravated by the stress and strain of his service. The learned counsel explained about the stressful and challenging conditions of service undertaken by the applicant during his service tenure. The learned counsel submitted that the applicant was posted at various peace as well as operational area in different parts of the country and had served in tough and different weather and environmental conditions in his career and discharged all assigned duties with utmost dedication in a well-disciplined and professional manner.

5. 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.

6. The learned counsel for the applicant submitted that during service the applicant has been posted to various different and difficult stations including Sea Service such as INS Dega, INS Garuda, INS Hansa etc., that while the applicant was posted at INS Shivaji, Peace Area in 1989 to 1992 he suffered from the disability 'Non-Specific Polyarthrititis', that the applicant had to take part in all physical activities of the trainees including running cross countries and gradually the disability of the applicant got deteriorated and in Jul 1991, the applicant was diagnosed with the disability of 'Osteoarthritis Bilateral Ankle' and the same was conceded to be aggravated by Military Service by the Release Medical Board dated 02.01.2021. It was further submitted on behalf of the applicant that the applicant's disability of 'Osteoarthritis Bilateral Ankle' was detected in 1991 while he was working in INS Shivaji after around 03

years of continuous service, and thus the disability can be presumed to be attributable to Military Service also.

7. The learned counsel for the applicant placed reliance on judgment of the Hon'ble Supreme Court in **UoI & Ors.** vs **Rajbir** in Civil Appeal No. 2904/2011, **UOI & Ors.** vs **Chander Pal** in Civil Appeal No. 2337/2009, **UOI & Ors.** vs **Angad Singh Titaria** (2015) in Civil Appeal No. 11208/2011 (12 SSC 257), **UOI & Ors.** vs **Manjeet Singh** (2015) (12 SSC 275) and **Ex-Gnr Laxman Ram Poonia** vs **UOI & Ors.** (2017) (4 SSC 697) to submit that the disability is to be treated as attributable to/aggravated by military service.

8. The learned counsel further placed reliance on the decision of the AFT, Principal Bench, New Delhi in the case of OA 886/2017 titled **Cdr S.M. Ahmed (Retd) vs. UOI & Ors** decided on 03.08.2017 wherein similarly situated persons were granted relief.

9. Furthermore, learned counsel for the applicant submitted that even though the applicant's disability of 'Osteoarthritis Bilateral Ankle' has been conceded as aggravated by the Military service by the Release Medical Board held on 02.01.2021, but the claim of his disability

pension was rejected by the Competent Authority stating as **'Not Entitled'**.

10. *Per contra*, the learned counsel for the respondents submitted that although RMB conceded the disability of the applicant namely 'Osteoarthritis Bilateral Ankle' as 'aggravated by service' as per Para 56, Chapter VI of GMO 2008, however, the competent Financial Authority, PIFA (N) observed that the applicant's disability first detected whilst he was posted at INS Shivaji (Peace) Station and the causal connection between the onset of disability and service factors could not be established as per Para 6 & 11 of GoI, MoD, Department of Ex-Servicemen Welfare letter No. 1(3)/2002/D(Pen/Pol) dated 04.09.2017 and the Appellate Committee on First Appeals (ACFA) and Second Appellate Committee on Pension (SACP) have not concurred the opinion of Release Medical Board for grant of disability pension stating that in the light of relevant rules and administrative/medical provisions the applicant is not entitled for grant of disability pension. Hence, his claim for the grant of the disability pension was rejected by the competent authority and thus the applicant is not

entitled to the grant of the disability pension, hence, the OA be rejected.

### **ANALYSIS**

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

12. In the present case, it is an undisputed fact that the applicant's disability, namely 'Osteoarthritis Bilateral Ankle', has been assessed @ 20 % for life and was also held to be 'Aggravated by Military Service' by the RMB. However, the Administrative authority (PCDA) has treated the said disability as 'Neither Attributable to nor Aggravated by Military Service' (NANA). The only question that now arises for consideration before this Tribunal is whether the assessment of the applicant's disability has been correctly made or not.

11. In the instant case, the applicant was diagnosed with the said disability in the year 1991, and his RMB held on 02.01.2001 assessed the same @20% and the disability was conceded as 'aggravated by service'.

13. It is an undisputed fact that at the time of joining the service in Aug, 1987, the applicant was found medically and

physically fit and the present disability had admittedly first occurred in 1991, i.e. after about 03 years of service, and was conceded as 'aggravated by service' by the Release Medical Board dated 02.01.2021 with the reasons for assessment being 'Aggravated' mentioned as 'aggravation conceded vide Para 56, Ch-VI of GMO-2008 due to service related strenuous activities like PT, parade, games and stress and strain of service' in the Part VII, Opinion of the Medical Board of the RMB. The same is reproduced to the effect:-

**PART VII**  
**OPINION OF THE MEDICAL BOARD**

1. Please endorse Causal diseases/ Disability in chronological order of occurrence:-

Disability	Attributable to service (Y/N)	Aggravated by service (Y/N)	Reason/Cause/Specific condition and period in service
<b>(a) OSTEOARTHRI TIS B/L ANKLE (M-0.9)</b>	<b>No</b>	<b>Yes</b>	<b>Individual developed disability in 1991. Aggravation conceded vide Para 56, Ch-VI of GMO-2008 due to service related strenuous activities like PT, parade, games and Stress and Strain of service.</b>
<p>Note:- 1. A detailed justification regarding the board's recommendations on the entitlement for each disease/ disability must be provided sequentially especially in <b>NANA</b> cases as per enclosed Appendix 'A'.</p> <p>2. In case of multiple disabilities of inadequate space, do not paste over the opinion, an additional sheet should be attached instead, providing a detailed justification, which is authenticated by the President and all members of the Medical Board.</p> <p>3. In case the medical board differs in opinion from the previous medical board, a detailed justification explaining the reasons to differ should be brought out clearly.</p> <p>4. A disability cannot simultaneously be both attributable to and aggravated by military service, only one or neither of which will apply.</p>			

14. However, the competent authority after adjudication assessed the said disability to be 'NANA' disagreeing with the findings of the Medical Board, thereby, the assessment/opinion of the RMB has been overruled by the administrative authority resulting in denial of the disability element of pension to the applicant for the disability of 'Osteoarthritis Bilateral Ankle'.

15. The primacy of the opinion/assessment of a Medical Board is no more *res integra*. The case in hand is squarely covered by the decision of the Hon'ble Supreme Court in the case of ***Ex Sapper Mohinder Singh Vs. Union of India & Ors. [Civil Appeal No. 104 of 1993]*** decided on 14.01.1993, wherein the Hon'ble Supreme Court has observed that without physical medical examination of the patient, the administrative/higher authority cannot sit over the opinion of a medical board. The observations of the Hon'ble Supreme Court in the judgment in the case of ***Ex Sapper Mohinder Singh*** (supra) being relevant are quoted below:-

***"From the above narrated facts and the stand taken by the parties before us, the controversy that falls for determination by us is in a very narrow compass viz. whether the Chief Controller of Defence Accounts***

*(Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension, in regard to the percentage of the disability pension or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the petitioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgment of the experts in the medical line without making any reference to a detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”*

16. In view of the decision of the Hon'ble Supreme Court in **Ex Sapper Mohinder Singh** (Supra), which has been relied upon in numerous orders of the Tribunal, we are of the considered view that the assessment/opinion of the RMB with regard to the disability in question to claim for disability element of pension was wrongly interfered with by the administrative authority which is unsustainable in law when the disability of the applicant has already been assessed @ 20% and held the same as 'Aggravated by service', by the RMB, which is a medical expert body. We, therefore, hold that the applicant is entitled to the disability element of disability pension in respect of the disability of

'Osteoarthritis Bilateral Ankle' assessed @ 20% for life along with broad-banding benefits.

### **CONCLUSION**

17. In light of the above, O.A. No. 2917 of 2022 is allowed. The respondents are directed to grant the disability element of disability pension to the applicant with respect to his disability of 'Osteoarthritis Bilateral Ankle' @ 20% for life from the date of his retirement, which is directed to be further rounded-off to 50% for life 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.

18. 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 @ 8% per annum from the date of receipt of copy of the order by the respondents.

19. All pending application(s), if any, is accordingly disposed of.

20. There is no order as to costs.

Pronounced in the open Court on this <sup>ST</sup> 1 day of April, 2026.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

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