

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 4934 of 2024 with MA 5124/2024

Ex NK Amulya Kumar Behera ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate

For Respondents : Mr. Niranjana Das, Advocate

CORAM :

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

ORDER

MA 5124/2024

MA 5124/2024 has been filed on behalf of the applicant seeking condonation of 8991 days delay in filing the present OA for reasons mentioned therein. In the interest of justice, in view of the judgments of the Hon'ble Supreme Court in the matter of ***UoI & Ors Vs Tarsem Singh*** (2008) 8 SCC 648 and in ***Ex Sep Chain Singh Thr LR. Dhaneshwari Devi Vs Union of India & Ors*** in Civil Appeal No. 022965/2017 arising out of Civil Appeal Diary No. 30073/2017 and the reasons mentioned, the MA 5124/2024 is allowed and the delay of 8991 days in

filing the OA is thus condoned. The MA is disposed of accordingly.

OA No. 4934/2024

2. Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this OA and the reliefs claimed in Para 8 read as under:-

“(a) To direct the Respondents to bring on record all service and medical records of the Applicant.

(b) To set aside/quash the Impugned letter/order dated 31.08.1999 and 21.10.2024.

(c) To grant disability pension to the Applicant from the date of release (31.01.1999) w.e.f. 01.02.1999.

(d) To direct the Respondents to grant broad banding of the disability pension w.e.f. 01.02.1999.

(e) To direct the Respondents to issue corrigendum PPO pertaining to the disability pension and board banding of the disability pension of the Applicant.

(f) To direct the Respondents to pay arrears of disability pension and board banded disability pension along with interest @ 12% w.e.f. 01.02.1999.

(g) To grant such other relief appropriate to the facts and circumstances of the case as deemed fit and proper.”

3. The applicant Ex Nk Amulya Kumar Behera was enrolled in the Indian Army on 08.06.1982 and was prematurely discharged from service on extreme compassionate grounds on 31.01.1999 under Army Rule 13 (3) (III) (iv) after rendering total 16 years, 07 months and 24 days of regular service. At the time of discharge the applicant was placed in low medical category BEE (P) PMT for his disability viz, ‘PIVD L5 SV1 722 (e) and the same was

conceded as 'aggravated' by Military Service by the RMB due to long marching and prolonged standing. The percentage of disablement was however assessed by the RMB @ 20% for two years. Thus, though the disability was assessed with the percentage of disablement @20%, it was discounted by 20% in view of the applicant being unwilling to undergo surgery and the composite assessment of the disability was thus put forth as being @ Nil % for life with the net assessment qualifying for disability pension at Nil.

4. The said RMB was approved by Offg DDMS, HQ 1 Corps dated 26.11.1998 which was upheld by the O/o Chief C.D.A (P) Allahabad which rejected the disability pension claim vide letter No. G-3/57/484/6/99 dated 26.07.1999 on the ground of his premature discharge at his own request and the applicant was informed of the same vide letter dated 31.08.1999. The applicant preferred his first appeal dated 10.10.2024 and the same was rejected by the Competent Authority vide letter No. P/147245367/DP-2/NER dated 21.10.2024 stating that 'first appeal against the rejection of the same should be preferred by the applicant within six months from date of rejection, if desires but the applicant failed to do so and now the applicant sent his first appeal

after five years, which is not tenable in terms of Govt of India, Min of Def letter No 1(3)/2008/D(Pen/Pol) dated 17 May 2016 and Para 21 (a) of Entitlement rules 2023. Hence, no action can be taken on the appeal at this belated stage due to policy constraints'. Aggrieved by this, the applicant filed the present OA and in the interest of justice in terms of Section-21(2) of the AFT Act, 2007 we consider it appropriate to take up the OA for consideration.

CONTENTION OF THE PARTIES

5. The learned counsel for the applicant submitted that when the applicant joined the Indian Army, he had been found medically fit and no note of any disability was made in respect of any disease including the present disability by the Medical Board.

6. The learned counsel for the applicant also submitted that in as much as the disability was "aggravated" by service and he was discharged in permanent Low Medical Category BEE (P) and further placed reliance on Rule 5 and Rule 14(b) of the 'Entitlement Rules for Casualty Pensionary Awards, 1982', which reads as under:-

"5. The approach to the question of entitlement to casualty pensionary awards and evaluation of disabilities shall be based on the following presumptions:-

(a) A member is 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.

(b) In the event of his subsequently being discharged from service on medical grounds any deterioration in his health which has taken place is due to service.

14 (b) A disease which has lead to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service."

7. The learned counsel for the applicant also placed reliance on the order of OA 404/2018 of the AFT (RB), Lucknow in ***Naik Mahendra Singh (Retd.) Vs. UOI & Ors.***, on the order of OA 47/2015 of the AFT (RB), Lucknow in ***Ex Sep Ram Naresh Vs. UOI & Ors.***, and on the order of OA 1451/2019 of the AFT, PB, New Delhi in ***Ex Cpl Uttam Kumar Das Vs. UOI & Ors.*** in which the similarly situated persons were granted relief.

8. The learned counsel for the applicant submitted that the disability of PIVD L5 SV1 was first diagnosed when he was posted at Jabalpur due to the injury sustained while on duty by the applicant because of the scooter causing him to fall and slip of foot resulting in loss of balance and this sudden impact led to the severe pain and injury which resulted into the present disability. As per injury report, it was held attributable to service and thereafter while he was

posted in 57 WEU, Udampur (J&K) a field area, on 20.11.1995 the injury become sever due to harsh working and climatic condition. Due to the deteriorating health condition, the applicant applied for premature discharge and permitted discharge w.e.f. 31.01.1999.

9. Per contra, learned counsel for the respondents submitted through their counter affidavit that the applicant was discharged from service on extreme compassionate grounds on his personal application of premature discharge, and hence, he is not entitled to disability pension. The respondents further submit that since the disability of the applicant was assessed below 20% (i.e., Nil) for life long, his claim for the grant of disability pension was rejected by the Competent Authority vide letter No. G-3/57/484/6/99 dated 26.07.1999 and the applicant filed his first appeal which was also rejected by the Competent Authority vide letter No. P/147245367/DP-2/NER dated 21.10.2024 on the ground of delay.

10. The respondents relied upon Regulation-173 of the Pension Regulations for the Army, 1961(Part-I), 1), the primary conditions for the grant of disability pension:-

“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 contended 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.”***

Furthermore, the respondents relied upon the Rule 6 (a) of the Entitlement Rules for Casualty Pensionary Award to Armed Forces Personnel-1982, which read as under:-

“6. Disablement of death shall be accepted as due to military service provided it is certified by appropriate medical authority that:-

(a) the disablement is due to a wound, injury or disease which-

(i) Is attributable to military service, or

(ii) existed before or arose during military service and has been and remains aggravated thereby. This will also include the participating/hastening of the onset of a disability.

The learned counsel thus submitted that the applicant's claim for the grant of the disability pension was rightly 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. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, we find that the applicant has been suffering from the disability viz. 'PIVD L5 SV1 @ 20%' which has been considered as 'aggravated' by Military Service due to long marching and prolonged standing by the RMB.

12. On a consideration, thus, submissions made on behalf of either side and the admitted factum of the RMB proceedings dated 14.11.1998 vide Para-3 (c), (d), (e) & (f) of Page-4 of the RMB categorically stating to the effect:-

"(c) Has the individual refused to undergo operation/treatment? If so, individual's reasons will be recorded. Yes attached.

Note:- In case of refusal of operation/treatment a certificate from the individual will be attached - Due to fear of surgery.

(d) Has the effect of refusal been explained to and fully understood by him/her viz a reduction in, or the entire withholding of, any disability pension to which he/she might otherwise be entitled? Yes

(e) Do the Medical Board consider it probable that the operation/treatment would have cured the disability or reduced its percentage? Yes, operation could have cured or reduced its percentage.

(f) If the reply to (e) is in affirmative, what is the probable percentage to which the disablement could be reduced by operation/treatment? Full recovery is expected after surgery (20%-20%)"

that full recovery is expected after surgery. Thus, there was only expectation and there was no clear assurance of full recovery after surgery. The probable percentage of disablement was stated to be reduced by operation/treatment

by 20% i.e., Nil and the factum that the MoD itself vide letter No. 16036/RMB/IMB /DGAFMS/ MA (Pension) dated 16.04.2019 issued to all the services of the Armed Forces had itself categorically stated to the effect that the refusal of an individual to undergo surgery for Spinal Disorders e.g. PIVD stands to reason and hence should not become a reason to reduce percentage of disability. In the present case also while the disability was conceded as aggravated by service, the Release Medical Board has decreased the percentage of disablement to **Nil** from **20%** on the ground of unwillingness of the applicant to undergo surgery, which, in our considered view is arbitrary and unsustainable/ unjustifiable. In support of this, we would like to refer to the order dated 12.05.2023 of this Tribunal in OA 205/2019 in the case of **Ex LME Pramod Yadav** (supra), Para 21 of which reads as under:-

"21. On a consideration of the submissions made on behalf of either side, it is essential to observe the reliance placed on behalf of the respondents on the orders and in OA 375 of 2018 in Ex Sgt Pradeep Rajaram Kamble vs UOI & Ors. and in OA 151 of Maj Manish Kumar vs UOI & Ors. is wholly misplaced as the facts of those cases are not in pari materia with the facts of the instant case. This is so in as much as in the instant case vide para-5(f) Part V in AFMSF, it had been specifically stated that the probable percentage to which the disablement could be reduced by operation was 50% and in response to Para-5(g) of Part V in AFMSF-16 in the Release Medical Board proceedings specifically asked. "Does the medical board consider individual's refusal to submit to operation / treatment reasonable?, give reasons in support of the opinion specifying the operations/ treatment

reasonable, it was stated " Yes, Treatment is subject to Individual's consent" and in terms of Appendix VII of Indian Navy (Pension) Regulation 1964, the refusal to undergo medical treatment by the applicant herein has to be held to be reasonable as it is apparent that in the RMB Proceedings itself it had been expressed therein that the percentage of success after surgery was only 50%, and the reduction of the percentage of disablement of the applicant from 20% to 10% by the pension authorities was wholly erroneous in terms of the verdict of the Honble Supreme Court in Ex. Sapper Mohinder Singh (Supra)".

13. It was observed to the effect that vide letter no. 16036/RMB/IMB/DGAFMS/MA(Pension) dated 16.04.2019 addressed to all the services of the Armed Forces as issued by the Ministry of Defence, it had been stated to the effect:-

"However, there are underlying complications. Recurrence of symptoms subsequently to initial relief is also a probability, because of early onset of osteoarthritis. Therefore, the refusal of an individual to undergo surgery for Spinal Disorders e.g. PIVD stands to reason and hence should not become a reason to reduce percentage disability."

The aforesaid letter itself indicates categorically to the effect that the refusal of an individual to undergo surgery for spinal disorders for e.g. PIVD stands to reason apparently as mentioned in the said letter itself that there are underlying complications and recurrence of symptoms subsequently to initial relief is also a probability because of early onset of osteoarthritis. The contents of the said letter are also categorically to the effect, directing the three Armed Forces that the refusal of an individual to undergo surgery for

spinal disorders for e.g. PIVD stands to reason and should not become a reason to reduce the percentage of disability.

14. On perusal of the RMB *qua* the applicant, we find that the RMB has assessed the said disability of the applicant as 'aggravated and assessed @ 20% due to long marching and prolonged standing of military service'. The relevant parts of the RMB *qua* the applicant in relation to this aspect, is reproduced herein below:-

"Part-III

OPINION OF THE MEDICAL BOARD

1. Did the disability/ies exist before entering service?
No.

2.(a) In respect of each disability he Medical Board on the evidence before it will express its view as to whether :

- (i) It is attributable to service during peace or under filed service conditions ; or
- (ii) It has been aggravated thereby and remains so ; or
- (iii) It is not connected with service

(a) The Board should state fully the reasons in regard to each disability on which its opinion is based.

(Disability	A	B	C
PIVD L5 SV1 722 (E)	NO	YES	No

(b) In respect of each disability shown as attributable under 'A' the Board should state, fully, the specific condition and period in service which caused the disability. NA

(c) In respect of each disability shown as aggravated under 'B' the Board should state fully -

(i) The specific condition and period in service which aggravated the disability. Due to long marching and prolonged standing.

(ii) Whether the effects of such aggravation still persist?
Yes

(iii) If the answer (ii) is the affirmative, whether effect of aggravation will persist of a material period. Yes

(d) In the case of a disability under 'C' the Board should state what exactly in their opinion is the cause thereof. NA."

15. As far as the issue that the applicant took premature retirement on 31.01.1999 and thus is not entitled to disability pension is concerned, we may refer to the order passed by the Tribunal (PB) in **Maj (Retd.) Rajesh Kumar Bhardwaj Vs. Union of India & Ors. [O.A. No. 336 of 2011] decided on 07.02.2012**, vide which all premature retiree armed forces personnel were allowed disability element of pension. Further, on the basis of the aforesaid order of the Tribunal, the respondents issued a policy in May, 2017 being GoI MoD letter No. 16(06)/2008/D(Pension/Policy) dated 19.05.2017 and the disability element of pension was allowed to the all pre-2006 Armed Forces personnel who were retained in service despite disability which is accepted as attributable to service and retired voluntarily or otherwise. Hence, since the disability of the applicant, namely, "PIVD L5 SV1" assessed @ 20% for two years, has already been assessed as 'aggravated by military service' by the RMB, in view of the order of the Tribunal in *Maj (Retd) Rajesh Kumar Bhardwaj (supra)* and the policy letter dated 19.05.2017, the applicant is entitled to grant of disability element of pension with effect from 01.01.2006.

16. Furthermore, with regard to the duration of disability of the applicant, which was considered to be of permanent nature, but assessed for a particular period i.e. for two years, it can be made out from the judgment of Hon'ble Supreme Court in the case of **Commander Rakesh Pande Vs. Union of India & Ors. [Civil Appeal No. 5970 of 2019]** decided on 28.11.2019, wherein the Hon'ble Apex Court while upholding the decision of the Armed Forces Tribunal granting disability pension for five years to the applicant, allowed the disability pension for life and observed as under:

***“Para 7 of the letter dated 07.02.2001 provides that no periodical reviews by the Resurvey Medical Boards shall be held for reassessment of disabilities. In case of disabilities adjudicated as being of permanent nature, the decision once arrived at will be for life unless the individual himself requests for a review. The appellant is afflicted with diseases which are of permanent nature and he is entitled to disability pension for his life which cannot be restricted for a period of 5 years. The judgment cited by Ms. Praveena Gautam, learned counsel is not relevant and not applicable to the facts of this case. Therefore, the appeal is allowed and the appellant shall be entitled for disability pension @ 50% for life.*”**

[Emphasis supplied]

It is pertinent to mention here that the Tribunal has followed the aforesaid judgment of the Hon'ble Apex Court in numerous cases where the duration of disablement was for a particular period and was granted for life.

17. We, therefore, hold that the applicant is entitled to the disability element of disability pension in respect of the disability of 'PIVD L5 SV1' assessed @ 20% for life along with broad-banding benefits.

CONCLUSION

18. In light of the above, O.A. No. 4934 of 2024 is allowed. The respondents are directed to grant the disability element of disability pension to the applicant with respect to his disability of "PIVD L5 SV1' @ 20% for life, which is directed to be further rounded-off to 50% from 01.01.2006 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. The payment of the amount of arrears however is directed to commence to run from a period of three years prior to the institution of the present OA on 07.11.2024, in terms of the verdict of the Hon'ble Supreme Court in **UoI & Ors Vs Tarsem Singh** (2008) 8 SCC 648.

19. 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% p.a. from the date of receipt of copy of the order by the respondents.

20. All pending application(s), if any, is/are accordingly disposed of.

21. There is no order as to costs.

Pronounced in the open Court on this ^{5th} 6 day of April, 2026.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/AK/