

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

O.A. No. 859/2024

In the matter of :

Ex CH EL (P) Shiv Rattan Singh ... **Applicant**

Versus

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

For Applicant : Mr. Ved Prakash, Advocate

For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM:

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

O R D E R

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) Quash Impugned order No. PEN/600/D/LRDO I:07/2023/137087N dated 08.05.2023.**
- (b) Direct the respondents to grant the Disability Element of Pension to the Applicant duly rounded off to 50% w.e.f. the date of discharge i.e 01.02.2018.**
- (c) Direct respondents to pay the due arrears of disability element of Pension with interest @12% p.a from the date of retirement with all the consequential benefits**
- (d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents."**

BRIEF FACTS

2. The applicant No. 137087-N Ex CH EL (P) Shiv Rattan Singh was enrolled in the Indian Navy on 30.07.2003 and was discharged from service on 31.07.2023 under the clause on fulfilling the conditions of his enrolment after rendering total 20 years and 02 days of regular service. At the time of discharge he was placed in low medical category S2A2(A) PMT by the Release Medical Board for disability viz. "Medial Meniscus Tear (LT) Knee (ICD No. S83.2)". The RMB however considered his disability as attributable to but not aggravated by service for the reason that the applicant sustained injury on 02.11.2018 while climbing down the ladder onboard INS Magar. Hence, the disability is conceded as attributable to the service vide approved Injury Report (IAFY-2006) dated 09.12.2019. The percentage of disablement was however, assessed by the RMB as under:-

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	3. What is present degree of disease/disablement as compared with a healthy person of the same age and sex?(Percentage will be expressed as Nil or as follows) 5%,10%,15% and thereafter in multiples of ten from 20% to 100%				
Disease/Disability (As numbered in Para 1 Part IV)	Percentage of disablement	Corresponding Para of GMO-2008	Composite assessment for all disabilities (Max 100%) with duration	Disease/ Disability Qualifying for Disability pension with duration	Net Assessment Qualifying for disability Pension (Max 100%) with duration

MEDIAL MENISCUS TEAR (LT) KNEE. (ICD No. S83.2)	20% (Twenty Percent) (for Life)	Para 34, Chapter-VII of GMO-2008	20% (Twenty Percent) (for Life)	MEDIAL MENISCUS TEAR (LT) KNEE (ICD No. S83.2) (for life) (10% disability reduced due to unwillingness given for surgery)	Nil (for life)
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Thus though it was assessed with the percentage of disablement @20%, it was discounted by 10% in view of the applicant being unwilling to undergo surgery and the composite assessment of the disability was thus put forth as being @10% for life with the net assessment qualifying for disability pension at Nil.

3. The said RMB was approved by CMO, HQ Southern Naval Command dated 28.10.2022 which was upheld by the Naval Pension Office which rejected the disability pension claim vide letter No. PEN/600/D/LRDO I:07/2023/137087N dated 08.05.2023 and the applicant was informed of the same with an advice that he may prefer an appeal to the Appellate Committee for First Appeal(ACFA) within six months from the date of receipt of letter. First appeal filed by the applicant was also rejected by the Competent Authority vide Directorate of Pay & Allowances, Naval Headquarters, Ministry of Defence, letter No. PN/0134/DP/1809/23 dated

10 Jan 2025. Aggrieved by this, the applicant filed the instant OA and in the interest of justice in terms of Section-21(1) of the AFT Act, 2007, we consider it appropriate to take up the OA for consideration.

4. The applicant submitted that when he joined the Indian Navy, 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.

5. The applicant also submitted that in as much as the disability was "Attributable" to service and he was discharged in Low Medical Category, he having been recruited as per Para-2 of Appendix V of the Navy (Pension) Regulation 1964 and Rule 4 of Entitlement Rules 1982, he ought to have been deemed invalided out from service.

6. The applicant further submitted that his disability of Medial Meniscus Tear (LT) Knee (ICD No. S83.2) commenced whilst he was posted in INS Magar, Kochi i.e., a field area, on 02.11.2018, and he was advised surgery but when he asked what were the chances of improvement of his disability, no satisfactory answer was given to him. He further submitted that he was told that the surgery is complicated and it may or may not improve his disability and the surgery involves a

high degree of risk. The applicant also submitted in these circumstances, when the advising doctors were themselves not very sure about the success of surgery and a risk was involved in the procedure, he was left with no option other than giving his unwillingness to undergo the surgery. Further he submitted that a format was given to him on which he put his signature but as he was not aware about the pension regulations at that time and no one advised him what could be the consequences in future of signing of the unwillingness certificate, he signed on the direction of the medical staff and that the treating doctors themselves were not sure about the success of the surgery and the applicant was told that a high degree of risk is involved in the surgery.

7. The applicant further submitted that in as much as Para-2 (f) of Page No.9 in AFMSF 16 in the Release Medical Board proceedings specifically asked as to what was the probable percentage to which the disablement could be reduced by operation, to which the answer given by the Release Medical Board was 10%, the Release Medical Board assessed that even after the operation/treatment, the disability percentage would be 10% then the Release Medical

Board could not have re-assessed the disability of the applicant assessed @20% by reducing the same to 10%.

8. Reliance was placed on behalf of the applicant 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.”

it had been categorically observed to the effect that the said 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, that 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.

9. Reliance was also placed on behalf of the applicant on the order dated 12.05.2023 of this Tribunal in OA 205/2019 in ***Ex LME Pramod Yadav vs. UOI & Ors.*** in which case the applicant thereby had suffered the disability of ACL Tear Left Knee ICD N.S83.2, Z09.0 in relation to which the percentage of disablement had been assessed initially @20% which was however reduced to 10% for life because the applicant thereof had refused and given his unwillingness/ refusal to undergo treatment/surgery for ACL Tear Left Knee ICD N.S83.2, Z09.0 and the RMB had advised (at para 5(f) of page no. 05 of AFSMF-16) that his disability percentage could have been reduced by 50% if he had undergone the treatment/surgery for ACL Tear Left Knee ICD N.S83.2, Z09.0 in which case the applicant therein was held entitled to the grant of disability element of pension as it was observed to the effect that where the RMB proceedings had themselves expressed therein that the percentage of success of surgery was only 50%, the reduction of the percentage of disablement of the applicant from 20% to 10% by the Pension Authorities was wholly erroneous.

10. Per contra, learned counsel for the respondents submitted through their counter affidavit that the applicant had given his unwillingness/ refusal to undergo treatment/ surgery for Medial Meniscus Tear (LT) Knee (ICD No. S83.2) and the Release Medical Board has advised (at para 2(f) of page No. 9 of AFMSF-16) that his disability percentage could have been reduced by 10% if the applicant had undergone the treatment/ surgery. The respondents further submits that since the disability of the applicant was assessed below 20% (i.e., 10%) for life long, his claim for the grant of disability pension was rejected by the Competent Authority vide letter No. PEN/600/LRDOI/07/2023/137087N dated 08.05.2023 and the applicant was advised to prefer an appeal against the rejection within 06 months from the date of receipt of the rejection letter. Accordingly, the applicant filed his first appeal which was also rejected by the Competent Authority vide letter No. PN/0134/DP/1809/23 dated 10.01.2025.

11. The respondents further relied upon the Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982 which specifies that:-

"Invaliding from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCOs/Ors & equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have invalidated out of service."

and submitted that it is evident from the records that the applicant was discharged on expiry of his initial engagement by the Release Medical Board, and not invalidated out on medical ground. It is further submitted by the respondents that since the percentage of disability of the applicant fell below 20% (i.e., 10%), he was not entitled for disability pension. The respondents also submitted that the broadbanding of the disability pension is also not applicable in this case.

12. The respondents further submitted that as per Regulation 104 of Navy Pension Regulation, 1694, it is provided to the effect:-

- "(a) If the refusal to undergo treatment or an operation is reasonable, the full disability pension normally admissible may be granted.**
- (b) If the refusal to undergo treatment or an operation is unreasonable.**
- (i) If the pension sanctioning authority, in consultation with Medical Advisor (Pension) where**

necessary decides that an operation or medical treatment will cure the disability.

The disability pension shall be withheld but the normal service pension or gratuity, if any, admissible under these regulations, or the pension or gratuity, if any admissible under regulation 110 may be granted, and the disability element or pension shall be restricted to that appropriate to the lower percentage of disablement.

(ii) If the pension sanctioning authority, in consultation with the (Medical Advisor Pension), where necessary, decides that an operation or medical treatment will reduce the disability to a lower percentage.

If that lower percentage is less than twenty per cent, the normal, service pension or gratuity, if any, admissible under these regulations, or the pension or gratuity, if any, admissible under regulation 110 may be granted".

ANALYSIS

13. On a consideration, thus, submissions made on behalf of either side and the admitted factum of the RMB proceedings dated 01.09.2022 vide Para-2(f) of Page-9 of the RMB categorically stating to the effect that the probable percentage of disablement could be reduced by operation/treatment was only 10% 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 attributable to service, the Release Medical Board has decreased the percentage of disablement to 10% 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 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)".

CONCLUSION

14. In view of the above, the OA 859/2024 is allowed. The impugned order No. PEN/600/D/LRDO I:07/2023/137087N dated 08.05.2023 is set aside and the applicant is held entitled to the grant of disability element of pension in relation to the disability of **Medial Meniscus Tear (LT) Knee (ICD S83.2)** assessed with an initial assessment of disablement of 20% for life which is held attributable to service by the Release Medical Board and the respondents are directed to grant disability element of pension to the applicant @ 20% for life from the date of his discharge, which is directed to be broadbanded to 50% for life in terms of the verdict of the Hon'ble Supreme Court in the case of **UOI & Ors. vs Ramavtar** in Civil Appeal No. 418/2012.

15. 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 @6% p.a. from the date of receipt of copy of the order by the respondents.

16. There is no order as to costs.

Pronounced in the open Court on the 6 day of January, 2026.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]
MEMBER (A)**

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