

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

OA 907/2020

Lt Col Gurinderjit Singh Grewal (Retd.) ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate  
For Respondents : Mr. Abhishek Singh, Advocate  
Mr. Prabodh Kumar, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)  
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal u/s 14 of the AFT Act 2007, the applicant has filed this OA praying to set aside the order dt. 25.09.2019 whereby his request to hold a RSMB in respect of disabilities "Tear Medial Collateral Ligament and Tear Medial Meniscus Right Knee" and further to hold it attributable to or aggravated by the military service to grant disability pension in respect of the aforesaid disability, if same is found to be 20% or more and also to calculate the applicant's composite disability on account of both his knees and to pay

arrears wef 01.01.2006 with 10% interest on arrears has been declined by the respondents.

2. The applicant was commissioned in Indian Army in Corps of Engineers on 13.06.1971 and prematurely retired from service on 12.12.1992. The RMB held on 18.11.1992, found the applicant fit to be released in S1H1A2P1E1 (Permanent) and suffering from ID IDK (LT) 717, V-67 assessed @ 15-19% with the RMB having opined the disability as attributable to military service.

3. Initially the disability pension claim of the applicant was not processed as the officer had retired prematurely prior to 01.01.2006. Aggrieved, the applicant filed OA No. 309/2015 before this Tribunal for grant of disability element and holding of Re-survey Medical Board for assessment of the degree of disablement of disability. The said OA was allowed vide order dt. 05.10.2015 directing the respondents to convene the appropriate Medical Board which may be re-survey Medical Board or re-categorization Medical Board as per Rules and direct the Board to examine the petitioner's disability percentage and the petitioner be granted disability pension as

per the opinion of the Medical Board about the percentage of disability, with benefit of rounding off of the disability pension. The petitioner be given such benefit with arrears of the last three years from the date of filing of this OA with respect to the disability, subject to the opinion of the medical Board's regarding the aggravation of the disability from a future date, the petitioner will be entitled to the benefit of the disability pension from said future date, but that percentage shall be the less than 50% in any case because of the Government of India's letter dated 31 Jan 2001 allowing the broad banding of the disability pension when it is less than 50% it is to be rounded off to 50%, and if it is 50% to 74% be rounded off to 75%, and if it is 75% to 99% be rounded off to 100%. The petitioner will be entitled to interest @9% per annum, from the date three years prior to of filing of this OA, which was filed on 21.04.2015.

4. Pursuant to order dt. 05.10.2015, RAMB was held at Command Hospital (Southern Command) Pune on 27.08.2016, which assessed the disability of the applicant @ 20% for life. Accordingly the applicant was sanctioned disability element @

50% for life wef 27.08.2016 (from the date of RAMB vide AG's Branch letter dt. 29.12.2017.

5. Thereafter, the applicant vide his petition dt. 07 Feb 2019, represented, that the conditions of his left knee has further been deteriorated and he had undergone Total Knee Replacement (TKR) at MH Kirkee on 18 Feb 2019. Due to substantial deterioration conditions of his knee, the officer requested for convening a Review Medical Board (RMB) so that he be accorded disability as per the present status of the knee. The case processed to the competent authority and sanction for holding 'RMB' was accorded and RMB was carried out at AFMC, Pune on 10 Jun 2019 (copy is annexed as Annexure-R-2), which assessed the disability of the officer as under:

Disability	Whole disablement		Part (disablement) due to non-service factors	Worsening due to natural progress of the disability	Net assessment properly referable to service	Duration of assessment
	Separate assessment	Combined Assessment				
IDK (LT) 717, V-67	40% of life	40% for life	-	-	40% for life	For life

It however did not change the percentage of the disability as the applicant was already in receipt of disability element @ 50% (Broad Banding).

6. Subsequently, after 27 years of his premature retirement the applicant submitted two petitions dt. 07.04.2019 and 19.08.2019 to his Record Office for Re-assessment Medical Board/Post Retirement claim for his Right Knee. The respondents vide Disability Pension order dt 25.09.2019 rejected the petition on the ground that: (i) IDK (Rt. Knee) was not mentioned in the RMB in 1992 therefore, the question of Re-assessment of that disability does not arise, in view of the para 10 of the Entitlement Rules for Casualty Pensionary Award to the Armed Forces 1982, which provides for consideration of Post Disability claim in case of a disease which was not present at the time of the retirement but arose within 10 years of retirement. Therefore, request for Post Disability Medical Board is not tenable at this belated stage.

#### **Submissions of the Parties**

7. The applicant submitted that before being released from the Army Service on Premature Retirement, RMB was held on

10.11.1992, which though found the applicant's disability in the left knee and placed him in medical category A2 (Permanent) with 15-19% disability for the same but omitted to record the applicant's disability in his right knee. Referring to Annexure A-7, A-8, and A-9, it is submitted that despite filing repeated application with request to conduct Re-survey Medical Board (RSMB) in view of his deteriorating medical condition post-retirement no action was taken by the respondents. Having left with no option, he filed OA No. 309/2015 which was allowed, directing the respondents to convene appropriate Re-assessment Medical Board to examine the percentage of applicant's disability and grant disability pension as per the opinion of Medical Board with benefit of rounding off. It is submitted that on 29.08.2016, the Army HQ/ MP 5(b) issued the convening order but the Re-assessment Medical Board was ordered to consider only the left-knee as per the RMB and not both the knees, and despite repeated requests to consider his Right Knee, the same was not done and he had to suffer severe continuous swelling in his injured Right Knee and underwent required surgery in Civil Hospital in 1996. Thereafter, on

11.07.2005, he underwent a surgical procedure for total knee replacement of the Right Knee. It is further argued that this Tribunal vide order dt. 15.10.2015 passed in OA 309/2015, directed the respondents to conduct an appropriate recategorisation Board for assessing applicant's disability and did not mention any particular knee. It was incumbent upon the respondents to conduct a wholistic examination keeping in view the applicant's past medical history of his Right Knee.

8. Per contra the stand of respondents is that as the IDK (Right Knee), was not mentioned in the RMB in 1992, question of Re-assessment of that disability does not arise. It is submitted that as per Para 4(a) Rule 10 of Entitlement Rules for Casualty Pensionary Awards 1982:

***“Cases in which a disease did not actually lead to the member's discharge from service but arose within 10 years thereafter, may be recognized as attributable to service if it can be established medically that the disability is a delayed manifestation of a pathological process set in motion by service conditions obtaining prior to discharge and that if the disability had been***

***manifest at the time of discharge the individual would have been invalidated out of service on this account”.***

9. Further referring to Para 4(c) Regulation 86 (1) of Pension Regulation for the Army 2008, Part-I it is submitted that:

***“Service personnel who had retired/discharged (otherwise than at his own request or in any of the circumstances specified in Regulation 29 and Regulation 41) on a retiring/service pension/gratuity, but who within a period of 10 years from the date of retirement is found to be suffering from a disease which is accepted as attributable to his military service, be granted in addition to his retiring/service pension/gratuity, a disability element with effect from the date of Review Medical Board constituted by the Director General Armed Forces Medical Services”***

10. It is further pointed out, that the applicant when filed OA 309/2015 for holding RAMB, neither mention about his ID Tear Medial Meniscus with Tear Medial Collateral Ligament (Optd.) i.e. Right Knee nor mentioned any note on his Right Knee when he received the benefits of disability element alongwith benefit of rounding off, pursuant to order dt.

05.10.2015 passed in said OA. It is stated that as per Para 4(a) Rule 10 of the Entitlement Rules for Casualty Pensionary Award to the Armed Forces Personnel, 1982 post discharge claim can only be considered, if the disease arose within 10 years thereafter.

11. We have heard the learned counsel for the parties and perused the record. The copy of medical board proceedings dt. 18.11.1992 has been produced by the applicant.

Part-I Personal Statement of the applicant reveals that:-

*It is an admitted fact that applicant had earlier filed OA 309/2015, a copy of which is annexed to this petition as Annexure A-12. Relevant part of the said OA is reproduced as under.*

***“The applicant is aggrieved by the refusal of the Respondents to grant Disability Pension to the Applicant after holding a Re-survey Medical Board (RSMB) in respect of the Applicant’s Disability which was assessed by the relevant medical board at 15%-19% and held to be attributable to military service. The respondents vide their letter dt 08.12.2011 have quoted the Govt policy stipulation issued by Government of India, Ministry of Defence, Deptt. Of Ex Servicemen vide letter No. 16(5)/D(Pen/Policy) dt 29***

**Sept 2009 vide which the existing rule was relaxed in respect of the grant of disability pension for the individuals who have discharged or retired from service at his own request but benefit of which was extended only to those individuals whose such discharge or retirement has taken effect with effect from 01.01.2006. Such decision of the Respondents is not only arbitrary, unreasonable and discriminatory but also against the series of judgments of Hon'ble Supreme Court and this Hon'ble Tribunal, thereby declaring the established legal position in no uncertain term that denial of any such benefit on the basis of date of retirement is unconstitutional. A copy of the letter dt. 08.12.2011 issued by the office of the Respondent No. 4 is annexed herewith as Annexure A-1".**

12. The applicant in the said OA vide para 8 sought for the following relief:

**(a) Set aside the order dated 08.12.2011 issued by the office of respondent No.4 and direct the respondents to hold a Re-Survey Medical Board in respect of the Applicant**

**(b) Direct the Respondents to pay disability pension to the Applicant if his disability is found to be 20% or more and attributable to, or aggravated, by the Military Service in the Re-Survey Medical Board w.e.f 01.01.2006 with 12% interest on the arrears.**

**(c) Issue such other order/direction as may be deemed appropriate in the facts and circumstance of the case.**

13. This Tribunal vide order dt. 05.10.2015 held in Para 5, 6, 7 & 8 as under:-

5. *The petitioner is a Commissioned Officer. In the OA 336/2011 as far back as on 07.02.2012, the Principal Bench of the Tribunal in the case of Maj (Retd) Rajesh Kumar Bhardwaj Vs. Union of India & Ors After considering a number of orders of the Bench of the Tribunal and the orders of the Hon'ble Supreme Court held that, even pre-2006 retirees whether PBOR, or officers both are entitled to the benefit of the disability pension. This view is continuously followed till today. The respondents contention, therefore, that the petitioner, since was premature retiree and that also pre-2006, therefore, is not entitled to disability pension on this ground, is rejected.*

6. *The petitioner's own facts clearly demonstrate that the petitioner continued in a low medical category during service and it is not a case of occurrence of any disability to the petitioner after 10 years of his discharge from service. So the petitioner's disability which has been held by a Medical Board itself, would be attributable to the petitioner's military service and will continue till such disability sustains, having direct connection with the petitioner's military service. Prima facie, we are of the opinion that the opinion of the initial Release Medical Board holding disability to be for two years is not justified, for the simple reason that the petitioner's disability even during his service period itself continued from 1979 to 1992 except in the year 1986. Thereafter the Medical Board declared petitioner's disability to be permanent, then in that situation we do not find any reason recorded in the Medical Board for holding that this disability will continue only for two years in future.*

7. *Be it as it may be, in the OA petitioner prayed for petitioner's re-examination by an appropriate Medical Board, who may decide about the petitioner's percentage of disability, and petitioner may be accorded disability pension according to the percentage of disability which may be determined by the Medical Board. Petitioner's ground is that once one has suffered any disability in service, and it has been aggravated after his retirement, the aggravation is due to the occurrence of the disability and therefore, such aggravation, if not caused by the disabled person himself then is a natural consequence of the disability suffered by such person during service and it makes such*

**person entitled to the enhanced percentage of disability pension. Consequently, it has been provided in the Government's letter dated 07.02.2001 the Ex Service personnel can request for re-examination by the appropriate Medical Board obviously, for getting the enhanced disability pension. Para 7 of the Government of India letter dated 07.02.2001 is as under**

**Re-assessment of Disability There will no periodical reviews by the Resurvey Medical Boards for re-assessment of disabilities in case of disabilities adjudicated as being of a permanent nature decision once arrived at will be and for the unless the individual himself requests for a review. In cases of disabilities which are not of a permanent nature, there will be only one review of the percentage by a Reassessment Medical Board to be carried out, within a specified time frame. The percentage of disability assessed recommended by the Reassessment Medical Board will be final and for life unless the individual himself asks for a review The review will be carried out by Review Medical Boards constituted by DGAFMS The percentage of disability assessed by the Review Medical Board will be final**

**8. In view of the prayer of the petitioner, we allow this OA and direct the respondents to convene the appropriate Medical Board which may be a re-survey Medical Board for re-categorisation Medical Board as per the Rules and direct the Board to examine the petitioner's disability percentage and the petitioner be granted disability pension as per the opinion of the Medical Board about the percentage of disability, with benefit of rounding off of the disability pension. The petitioner be given such benefit with arrears of last three years from the date of filing of this OA with respect to the disability, subject to the opinion of the Medical Board's opinion of the aggravation of the disability from a future date the petitioner will be entitled to the benefit of the disability pension from said future date, but that percentage shall be the less than 50% in any case because of the Government of India's letter dated 31.01.2001 allowing the broad banding of the disability pension when it is less than 50% it is to be rounded off to 50%, and if it is 50% to 74% be rounded off to 75% and if 75% to 99% be rounded off to 100% The petitioner will be entitled to interest @ 9% per annum, from the date three years prior to of filing of this OA which was filed on 21 April, 2015 OA is allowed accordingly.**

14. Applicant though claims that he underwent requisite knee surgery (Right knee) in a civil hospital in 1996 and Total Knee Replacement (TKR) of the right knee on 11.07.2005, but did not make any mention of the same in first OA 309/2015 when he applied for conducting Re-survey Medical Board for determining the percentage of the disability as his disability IDK (LT) 717 U-67, ATTR was assessed less than 20% (15%-19%) vide RMB dt. 10.11.1992 for two years nor in second petition dt. 07.02.2019, filed for conducting Review Medical Board (RMB) on the ground that condition of his left knee has further deteriorated nor did he even challenged the findings of RMB dt. 10.11.1992, which mention only one disability IDK (LT) 717 U-67, ATTR. Now, after receiving the benefit of Disability Element alongwith benefit of rounding off, this petition is filed only as an afterthought.

15. In view of the aforesaid discussion, we also not find any merit in the present OA and the same is accordingly dismissed.

16. Pending miscellaneous application, if any, stands disposed of.

Pronounced in open Court on this 24<sup>th</sup> day of February, 2026.

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

**(RASIKA CHAUBE)  
MEMBER (A)**

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