

Reserved

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 715 of 2023

Monday, this the 08th day of April, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. IC-40543P, Brigadier Purna Chandra Jena (Retd.), S/o Late Sridhar Jena, R/o 4B, 504, AWHO, Greater Noida, Gautam Budh Nagar District, Uttar Pradesh, PIN-201315.

..... Applicant

Ld. Counsel for the Applicant : **Shri Manoj Kumar Awasthi**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Integrated HQ of MoD (Army), Adjutant General’s Branch, Addl. Dte. Gen. MP (P&P), ORO/MP-7/Adjudication Cell, West Block-III, R.K. Puram, New Delhi-110066.
3. The PCDA (Pension), Draupadi Ghat, Allahabad (Prayagraj).

.....Respondents

Ld. Counsel for the Respondents. : **Shri J.N. Mishra**, Advocate
Central Govt. Counsel
Assisted by **Major Uma Yadav**,
Departmental Representative

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- A. *To issue/pass an order to set-aside/quash the letter/order No. 12681/IC-40543P/T-8/MP-5(B)/68/21/AG/MP (ORO) dated 20 Sep 2020 passed by respondent No. 3, which are being annexed as Annexure No. 1 to this Original Application.*
- B. *To issue/pass the direction and order to the respondents to Grant disability element of disability pension @50% for life from date of Superannuation i.e. 30.11.2020 along with 12% interest on arrear in light of Hon’ble Apex Court Judgments.*
- C. *To issue/pass an order or directions to the respondents to Grant benefit of broad banding/rounding off disability pension to the tune of @75% for life from date of Superannuation i.e. 30.11.2020 along with 12% interest on arrear in light of Hon’ble Apex Court Judgments and Government letter dated 31.01.2001.*
- D. *To issue/pass an order or directions to the respondents to expunge/set aside the remark of 10% (20% deemed to be 10% for Unwillingness for surgery) with respect to the injury of Left Knee and to accept ‘Aggravation due to /Attributable to Military Service’ for the injury of PIVD S4-S5/S5-S1.*
- E. *To issue/pass an order or directions to the respondents to accept 30% of Disability for both the injuries of Left Knee with A3 (P) for Pension with effect from the date of superannuation.*
- F. *To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- G. *To allow this original application with costs.*

2. Briefly stated, applicant was initially commissioned in the Indian Army 12.06.1982 and was retired on 30.11.2020 (AN) on

attaining the age of superannuation. At the time of retirement from service, the Release Medical Board (RMB) held at New Delhi on 21.10.2020 assessed his disabilities (i) '**TEAR MEDIAL MENISCUS LT KNEE (S83.242A)**' @10% (20% deemed to be 10% for unwillingness for surgery) as **attributable to service** as injury sustained by the applicant on 02.08.1999 while serving in 153 Med Regt (SP), Panchgaon (Kupwada), Field/OP Rakshak Area due to action against enemy forces in Operational Area at Chaluka, Kargil Turtuk Sector during OP Vijay, (ii) '**PIVD L4-L5/L5-S1 (M51.06)**' @20% for life as **aggravated by service** due to physical stress and strain of military service and (iii) '**BUCKET HANDLE TEAR MEDIAL MENISCUS WITH PARTIAL TEAR ACL RIGHT KNEE (S83.211)**' @30% for life as **attributable to service** as injury sustained by the applicant on 03.07.2008 on duty, composite disabilities @50% for life vide PPO No. 131202000870. The applicant was granted War Injury Element @20% broad-banded to 50% for life. The ID (ii) i.e. '**PIVD L4-L5/L5-S1 (M51.06)**' has not been approved by the Competent Authority and composite assessment for first and third disability @44% broad banded to 50% was approved. In the Column of Disability Element Percentage it has been mentioned that "*Nil (as Broad Banded composite assessment of War Injury and Disability minus Broad Banded War Injury Element is NIL)*". The applicant preferred First Appeal dated 21.07.2022 and 17.12.2022 the reminder thereof was

sent on 10.05.2023 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant submitted that the applicant's first disability was found to be attributable to military service vide RMB which had also assessed the disability @20% for life but wrongly it was reduced to 10% due to unwilling to surgery. The second disability of the applicant was assessed @20% for life as **aggravated by service** it without having any authority the Competent Authority has 'Not Approved' the opinion of the RMB resulting thereto composite assessment for the first and third disability was reduced to 44% broad-banded to 50%. The applicant was granted War Injury Element @20% broad-banded to 50% for life. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such in addition to War Injury Element the applicant be granted disability element of disability pension and its rounding off to 50%.

4. Respondents were provided several opportunities to file Counter Affidavit but they did not file Counter Affidavit, hence, opportunity to file Counter Affidavit was closed vide order dated 15.02.2024. Further, the respondents were directed to produce original documents pertaining to the case for perusal of the Bench which they failed to do so. Hence, Original Application has been heard and being decided on the basis of documents available on record.

5. However, Ld. Counsel for the respondents orally conceded that the second disability of the applicant @20% for life has been regarded as **aggravated by** the RMB, but pension sanctioning authority i.e. Competent Authority has Not Approved the claim of the applicant on the ground that the second disability of the applicant is neither attributable to nor aggravated by military service, hence applicant is not entitled to disability element of disability pension for the second disability. He further submitted that the applicant was granted War Injury Element @20% broad-banded to 50% for life for the first disability. He further contended that Disability Element is Nil as broad-banded composite assessment of War Injury and Disability Element minus Broad Banded War Injury Element is Nil. He pleaded for dismissal of the Original Application.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the records and we find that the questions which need to be answered are three folds:-

- (a) Whether the RMB can reduce the degree of disablement on the ground of unwilling for surgery?
- (b) Whether the Competent Authority has authority to overrule the opinion of RMB in respect of second disability?

- (c) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

7. In the instant case the first disability has been assessed @20% for life by the RMB. At page 8 of the RMB proceedings, in the columns of "*Percentage of disablement*" for the first disability the RMB endorsed that "*10% (20% deemed to be 10% for unwillingness for surgery)*". It was done due to unwilling certificate given by the applicant. We are of the opinion that the degree of disablement of first disability cannot be reduced by the RMB on the ground of unwilling for surgery by the applicant. Accordingly, we hold that the assessment degree of first disability is @20% for life.

8. This is a case where the second disability of the applicant has been held as aggravated by military service by the RMB. The RMB assessed the second disability @20% for life. However, the opinion of the RMB has been overruled by Competent Authority and the second disability has been regarded as neither attributable to or aggravated by military service and Not Approved the opinion of the RMB.

9. The issue of sanctity of the opinion of a Release Medical Board and its overruling by a higher formation is no more Res Integra. The Hon'ble Supreme Court in the case of ***Ex. Sapper Mohinder Singh vs. Union of India & Others***, in Civil Appeal No.164 of 1993, decided on 14.01.1993, has made it clear that

without physical medical examination of a patient, a higher formation cannot overrule the opinion of a Medical Board. Thus, in light of the observations made by the Hon'ble Apex Court in the case of ***Ex Sapper Mohinder Singh vs. Union of India & Others***, we are of the considered opinion that the decision of competent authority over ruling the opinion of RMB held on 21.10.2020 with regard to second disability is void in law. The relevant part of the aforesaid judgment is 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 Applicant was subjected to any higher medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the Applicant. 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.”

10. Thus in light of the aforesaid judgment (supra) as well as IHQ of MoD (Army) letter dated 25.04.2011 it is clear that the disability assessed by RMB cannot be reduced/overruled by the Competent Authority, hence the decision of Competent Authority with regard to second disability is void. Hence, we are of the opinion that the

second disability of the applicant should also be considered as aggravated by military service as has been opined by the RMB.

11. In para 17 A (a) of Chapter VII of the Guide to Medical Officer (Military Pensions), 2002 the provision for composite assessment has been mentioned which reads as under :-

“17A. Composite Assessment

(a) Where there are two or more disabilities due to service, compensation will be based on the composite assessment of the degree of disablement. Generally speaking, when separate disabilities have entirely different functional effects, the composite assessment will be the arithmetical sum of their separate assessment. But where the functional effects of the disabilities overlap, the composite assessment will be reduced in proportion to the degree of overlapping. There is a tendency for some Medical Boards to reduce the composite assessment in the former group of cases. This is not correct.”

12. In the instant case there are functional effects of the first, second and third disabilities overlapping, as such composite assessment is to be reduced in proportion to the degree of overlapping. The degree of first disability is held @20%, second disability is @20% and third disability is @30% for which we are of the view that there is some overlapping. Accordingly, we hold that composite assessment of first, second and third disabilities is @55.2% (First disability is 20%, second disability is $100 - 20 = 80 \times 20\% = 16\%$ and third disability is $100 - 36 = 64 \times 30\% = 19.2\%$) for life.

13. Further, Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi vide their letter No.16(02)/2015-D (Pen/Pol) dated 08.10.2016 has issued method of calculation of disability. Para 3 of the aforesaid letter are quoted as under :-

“3. Now, the issue has been analyzed in totality and the undersigned is directed to state that the methodology of calculation of pension values in cases where War Injury Element and Disability Element both exist may be carried out as follows. Firstly, the composite assessment for all accepted disabilities shall be derived. The higher element, i.e. War Injury Element (W/E) shall be deducted from the composite assessment and paid in full, irrespective of the percentage of assessment. The remainder shall be calculated as the normal Disability Element (DE). The minimum assessment criterion shall not be applicable in such cases as the net assessment reckonable for W/E and DE together is more than 20%.

(a) Discharge Cases – Cases where Armed Forces Personnel are discharged from service on completion of prescribed terms of engagement, the higher element, i.e. the War Injury Element (W/E) shall be deducted from the composite assessment and paid in full, irrespective of the percentage of assessment. The remainder shall be calculated as normal Disability Element (DE).”

(b) Invalidment Cases – Cases where Armed Forces Personnel are invalided out on medical ground which is attributable to or aggravated by military service, the composite assessment and war injury element will be rounded off in terms of para 7.2 of GOI, MOD letter No. 1(2)/97/D (Pen-C) dated 31.01.2001. Further, rounded percentage of War Injury Element (W/E) shall be deducted from the rounded percentage of composite assessment. The remainder shall be calculated as normal Disability Element (DE).

14. Further, Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi has issued letter No. 17(01)/2017/D(Pen/Policy) dated 23.01.2018 with regard to

implementation of Government decision on the recommendations of the 7th Central Pay Commission (CPC) – Revision of Disability/War Injury Pension for pre-1.1.2016 Defence Forces pensioners. Para 3 of the aforesaid letter dated 23.01.2018, which is relevant for adjudication of this Original Application, is reproduced as under :-

“3. Rates for calculation of disability where composite assessment has been made due to existence of disability as well as war injury, shall be determined in terms of provisions contained in Para 3(b) of Ministry’s letter No. 16(02)/2015-D (Pen/Pol) dated 8th August 2016. The amount of revised disability finally arrived shall be rounded off to next higher rupee.”

15. In view of the above, as in the instant case the applicant was retired on attaining the age of superannuation and the composite assessment of all the three disabilities is held @55.2% which would be rounded to 75%. The applicant is already in receipt of War Injury Element @20% rounded off to @50% for life. The aforesaid War Injury Element @50% are to be deduced from the rounded assessment of all the three disabilities i.e. from 75% which comes to 25%.

16. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon’ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

17. As such, in view of the decision of Hon’ble Supreme Court in the case of **Shiv Dass (supra)** as well as Government of India, Ministry of Defence, Department of Ex-Servicemen, New Delhi letters No.16(02)/2015-D (Pen/Pol) dated 08.10.2016 and No.17(01)/2017/D(Pen/Policy) dated 23.01.2018, we are of the considered view that in addition to War Injury Element @50% for life which the applicant is already getting, the applicant is entitled for the grant of Disability Element of Disability Pension @25% for life from three preceding years from the date of filing of the Original Application.

18. In view of the above, the **Original Application No. 715 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned orders, rejecting the applicant’s claim for grant of disability element of disability pension, are set aside. The second disability of the applicant is also held as aggravated by Army Service as has been opined by the RMB. In addition to War Injury Element @50% for life which the applicant is already getting, the

applicant is entitled to get disability element @25% w.e.f. three years preceding the date of filing of Original Application. In addition to War Injury Element @50% for life which the applicant is already getting, the respondents are directed to grant disability element to the applicant @25% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 19.06.2023. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment.

19. No order as to costs.

20. Major Uma Yadav, Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 08 April, 2024

AKD/-