

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 188 of 2020**

Wednesday, this the 27<sup>th</sup> day of October, 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 15624528A Ex Rect Puran Singh  
 S/o Sri Parvi Singh  
 R/o Vill – Rasidpur, PO – Sadabad, District – Hatharas (UP)  
 ..... Applicant

Ld. Counsel for the Applicant: **Shri K.K. Misra**, Advocate

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Commandant, The Guards Regimental Centre, Kamptee.
4. PCDA (P) Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh**,  
 Central Govt Counsel.

**ORDER (Oral)**

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

“(i) To quash HQ M&G Area, letter No. 402007/AFT/DV-2 dt 15 Dec 2017 (Annexure A-6 to the OA).

(ii) To direct the respondents to grant 20% disability pension to the applicant from June 2014, the date of his discharge from the service duly rounded off to 50% as per the policy on the subject.

(iii) Any other relief which the Hon'ble Tribunal may think just and proper may be granted to the applicant.

(iv) Cost of the case may be awarded in favour of the applicant.”

2. The facts of the case, in brief, are that applicant was enrolled in the Army on 18.12.2012. During training applicant suffered injury which was diagnosed as “CONTUSION (RT) KNEE”. While undergoing treatment at INHS Asvini, applicant was advised for surgery but he submitted his unwillingness. Finally, applicant was placed in low medical category for his disability “**IDK RT KNEE**”. The applicant was served a show cause notice and in reply to show cause notice, applicant stated that he will not prefer any appeal against IMB findings vide letter dated 08.04.2014. While undergoing treatment in Military Hospital, applicant became AWL on two occasions and was awarded 14 days pay fine and 3 days pay fine under Army Act Section 39(a). The applicant was invalided out from service w.e.f. 29.06.2014 in low medical category A5 under Rule 13 (3) III (IV) of Army Rules, 1954. The Invaliding Medical Board (IMB) assessed his disability “**IDK RT KNEE**” @ 20% for 5 years and considered it attributable to military service. The applicant filed OA No. 67 of 2016 before this Tribunal which was decided on 07.09.2017 but his appeal dated 03.03.2014 was rejected by the respondents vide order dated 15.12.2017. The applicant was not reinstated in service and being aggrieved, the applicant has filed the instant Original Application for grant of disability pension.

3. Learned Counsel for the applicant submitted that the applicant was medically fit when he was enrolled in the Army and no disability

was recorded at the time of his commissioning. The applicant suffered injury in his right knee and was under treatment in different hospitals from 03.09.2013 to 27.02.2014/till invalided out from service. The applicant was admitted in various hospitals for a period of about six months. He submitted that whether his injury could be cured by medicines or it needed an operation could have been decided in the course of first admission/transfer to these hospitals. The applicant was shuttled between three places, i.e. Training Centre, MH Kamptee and MH Asvini on four occasions but what treatment was provided is not known. During the last week of Feb. 2014, applicant was asked by Sr. Advisor, Orthopaedic Surgery of MH Asvini to undergo an operation of knee, which the applicant refused.

4. Learned Counsel for the applicant further submitted that it may be observed that by this time the applicant had already missed his training for about six months and any further absence from the training meant that he was out from the training and also out of Army service. It may further be observed that in medical board proceedings of the applicant, disability due to knee injury was assessed @ 20% for five years then can probable percentage of disablement be reduced by operation treatment? Meaning thereby that before and after operation the disability of the applicant remains the same, therefore, applicant's refusal to undergo operation cannot be a ground for denying him disability pension. Therefore, the applicant is entitled for disability pension @ 20% being attributable to military service. He prayed for disability pension @ 20% to be

rounded off to 50% as per Govt. of India, Ministry of Defence letter dated 31.01.2001.

5. On the other hand, learned counsel for the respondents submitted that though the IMB has assessed the disability of the applicant @ 20% for 5 years, attributable to military service but it is nil % for grant of disability pension. Earlier, the applicant filed OA No. 67 of 2016 before this Tribunal which was decided on 07.09.2017 with directions to the respondents "to decide the appeal in accordance with law by a speaking order expeditiously, say, within three months from the date of presentation of a certified copy of the order. In case the appeal dated 03.03.2014 is not allowed, the appellate authority shall also look into applicant's right to disability pension in view of law settled by Hon'ble Supreme Court within the aforesaid period". The appeal of the applicant was disposed off and the applicant was not reinstated in service and the applicant has now filed the instant Original Application for grant of disability pension.

6. Learned counsel for the respondents further submitted that since the applicant has refused to undergo an operation as advised by the Surgical Specialist, he is not entitled for disability pension as per para 85 (a) of Pension Regulations for the Army, 2008 (Part-1). The applicant's disability is assessed @ 20% for five years but it is nil % for grant of disability pension. Had he undergone the knee surgery, his 20% disability could have been cured as endorsed in Release Medical Board by the medical authority. As such, his claim for disability pension has rightly been rejected by the competent

authority. He submitted that the instant Original Application does not have any merit and the same is to be dismissed.

7. We have heard learned counsel for the parties. We have also gone through the Invaliding Medical Board proceedings as well as the records.

8. We find that applicant filed Original Application No. 67 of 2016 before this Tribunal which was decided on 07.09.2017 and applicant's prayer for reinstatement in service was dismissed, however, respondents were directed to consider grant of disability pension to the applicant which was denied by the respondents. The respondents have now denied grant of disability pension to the applicant under the provisions of para 85 (a) of Pension Regulations for the Army, 2008 (Part-1) as the applicant refused to undergo operation of his knee but we don't agree with this logic as IMB has conceded attributability to military service @ 20% for five years and refusal to undergo operations will not change the percentage of disablement which before and after may be the same. Additionally, the law on upholding the opinion of a medical board has already been settled by the Hon'ble Supreme Court in the case of **Ex. Sapper Mohinder Singh vs. Union of India** in Civil Appeal No 104 of 1993 decided on 14.01.1993. Hence, we set aside the order of competent authority and restore the original opinion and findings of IMB that his disability "**IDK RT KNEE**" is attributable military service.

9. In view of the above, applicant is held entitled to 20% disability pension for five years from the date of invaliding out from service. The

applicant will also be eligible for the benefit of rounding off of disability pension from 20% to 50% for five years in terms of the decision of Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 dated 10.12.2014).

10. Resultantly, the O.A. deserves to be allowed, hence **allowed**. The impugned orders are set aside and the original opinion of IMB is restored. The applicant's disability "**IDK RT KNEE**" is to be considered as attributable to military service in line with IMB recommendations. The applicant is entitled to disability pension @ 20% for five years which shall be rounded off to 50% for five years from the date of his invaliding out from service. The respondents are directed to grant disability pension @ 50% for five years from the date of invaliding out from service. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. The respondents are also directed to conduct a Re-survey Medical Board for the applicant to assess his further entitlement of disability pension. Default will invite interest @ 8% per annum till actual payment.

11. No order as to costs.

12. Misc. Application(s), if any, pending for disposal, shall be treated to have been disposed of.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: October, 2021

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