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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3336/2025, CM APPL. 15773/2025 & CM APPL. 15774/2025

UNION OF INDIA & ORS. .....Petitioners

Through: Mr. Rohan Jaitley, CGSC with Mr. Dev Pratap Shahi, Mr. Varun Pratap Singh, Mr. Yogya Bhatia, Advs.

versus

EX SGT DULAL DAS .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% 18.03.2025

C. HARI SHANKAR, J.

1. The respondent was enrolled in the Indian Air Force[1] on 17 December 1998. It is not in dispute that, at the time of enrolment, he was physically fit and not suffering from any medical disease or disability.

2. On 2 September 2012, while performing night QRT drill, he met with an accident. He was treated for the accident at the Military Hospital, Deolali.

[1] "IAF" hereinafter

3. After the treatment, he was examined by the Release Medical Board[2], who certified that he was suffering from ID Anterior Cruciate Ligament Tear with Medial and Lateral Meniscus Tear (Lt) Knee (old), assessed at 20%. The assessment of the injury at 20% was, however, reduced to 10%, on the ground that the respondent had refused to subject himself to surgery.

4. It appears that, thereafter, the respondent, at his own request, was discharged from the IAF. Thereafter, the respondent applied for release of disability pension.

5. The request was declined by the petitioners on 23 July 2019 on the ground that, as per Regulation 153[3] of the 1961 Pension Regulations applicable to the IAF, disability pension was payable only if the disability suffered was 20% or more and was attributable to air force service.

6. While the petitioner did not join issue with the respondent regarding the attributability of the disability suffered to air force service, the petitioner contended that, as his degree of disability had been scaled down to 10%, he did not satisfy the 20% criterion which was the *sine qua non* for being entitled to disability pension.

7. Aggrieved by the aforesaid rejection, the respondent

[2] "RMB", hereinafter

[3] **153. Primary conditions for grant of Disability Pension –** Unless otherwise specifically provided, a 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 per cent or over.

The question whether a disability is attributable to or aggravated by air force service shall be determined under the regulations in Appendix II

approached the Armed Forces Tribunal[4] by way of OA 1515/2019[5].

8. The Tribunal has allowed the respondent's claim, treating his disability as 20% and further extending him the benefit of broad banding in terms of the order of the Supreme Court in ***UOI v Ram Avtar***[6].

9. The reasoning of the learned Tribunal is to be found in paras 3 to 6 of the impugned order which read thus:

> "3. The said facts put forth hereinabove are not refuted on behalf of either side.
>
> 4. It has been submitted on behalf of the applicant by learned counsel for the applicant placing reliance on the RMB proceedings themselves dated 26.07.2018 to the effect that as per the said RMB proceedings itself in response to query no 5(f) which reads to the effect it was stated as under:-
>
> > "If the reply to (e) is in affirmative, what is the probable percentage to which the disablement could be reduced by operation/treatment? No relevant data on probable percentage cure rate available; can only be commented upon post surgery."
>
> and that in response to query no 5(h) which read to the effect it was stated as under:-
>
> > "Does the Medical Board consider the individual's refusal to submit to operation/treatment reasonable? Give reason in support of the opinion specifying the operation/treatment recommended. Yes, given the risk involved in surgery and chances of persistence of the disability, the individual's refusal can be considered acceptable."
>
> 3. On a bare perusal of the response put forth by the Release Medical Board conducted in relation to the attributable disability of the applicant which has been opined to be attributable in Part-V of

[4] "The Tribunal", hereinafter
[5] **Ex Sgt Dulal Das v Union of India & Ors**
[6] **2014 SCC OnLine SC 1761**

the opinion of the Medical Board dated 26.07.2018 itself it has been stated to the effect that in relation to the aspect of the probable percentage to which the disablement would be reduced by operation/treatment that there was no relevant data on the probable percentage cure rate available and that could only be commented upon post-surgery.

Inter alia, the Release Medical Board qua the query put to it in relation to the aspect of consideration of an individual's refusal to submit to operation/treatment being considered reasonable and asking for the reasons in support of the opinion specifying the operation/treatment recommended categorically observed to the effect that the refusal of the applicant to submit to operation/treatment was reasonable by a categorical affirmative „Yes" and stating further to the effect that given the risk involved in surgery and chances of persistence of disability, the individual's refusal can be considered as acceptable and despite the responses of the Release Medical Board in paras 5(f) and 5(h) thereof, the percentage of disablement was reduced from 20% for life to 10% for life for the refusal of the applicant to undergo the surgery of which the aspect of the cure rate was not known and despite the factum that there could be no comment made by the Release Medical Board in relation to the aspect of probable percentage cure rate without conducting the surgery, and also whilst stating that taking into account the risk involved in the surgery and the chances of the persistence of the disability the applicant's refusal for undergoing the surgery could be considered as acceptable.

4. Learned counsel for the respondents however, places reliance on the Part-II unwillingness certificate for treatment (surgical) signed by the applicant and it is submitted on behalf of the respondents that the applicant had thereby stated vide certificate dated 29.10.2014 to the effect:-

> "The consequence of this refusal to undergo treatment has been explained to me in detail in the language understand and I accept the same. I also understand I that this may have adverse effect on my disability pension, which may be admissible to me as per Pension Regulations – 1961 (Part-I) at the time of release/invalidment from service."

It has thus, been submitted on behalf of the respondents that the applicant was well aware of the consequences of his refusal to undergo treatment which had been explained to him in detail in the language that he understood and accepted and that he understood also that this may have an adverse effect on his disability pension which may be admissible to him as per Pension Regulations1961,

Part-I at the time of release/invalidment from service.

5. It is essential to observe that the reliance placed on the paragraph of the unwillingness certificate for treatment (surgical) dated 29.10.2014 that has been submitted by the applicant which is apparently a typed format overlooks the reasons for which the applicant had given his unwillingness certificate for treatment in the very same certificate dated 29.10.2014. This is so in as much as the applicant had stated therein to the effect:-

> "I, No: 743147 F, Rank Sgt, Name: D Das hereby express my unwillingness for surgery for …….. (specify type of treatment/operation/investigate procedure) which is considered essential by the treating medical officer. The reason for this refusal is the existing condition of my disease may not be improved after the operation due to this, I am not willing to undergo the surgery."

Thus stating that the reasons for his refusal was the existing condition of his disease which may not be improved after the operation and that he was thus, not willing to undergo the surgery. As has been observed here in above, the Release Medical Board had itself opined that given the risk involved in surgery and the chances and persistence of the disability, the individual's refusal could be considered to be accepted. Apparently thus, in the circumstances the reduction of the percentage of disablement of the disability of the applicant for 20% for life to 10% for life cannot be accepted as being reasonable, correct or in the interest of justice as it is in total violation of even the norms for accepting a reduction of the disablement of percentage when the Release Medical Board itself states that the risk involved in this surgery and the chances of persistence of the disability whilst being taken into account would make the applicant's refusal to be considered acceptable and that there was no relevant data of probable percentage cure rate available which could be commented only upon post-surgery. Reliance in relation thereto has been placed on behalf of the applicant on the order dated 23.01.2018 of AFT, Regional Bench, Lucknow in OA 314/2017 and on the order dated 27.01.2021 of the AFT, Regional Bench, Chandigarh Bench at Chandimandir in OA 407/2020 to contend to similar effect.

6. In view of the observations herein that the refusal of the applicant to undergo the surgery was apparently reasonable in terms of the Release Medical Board proceedings dated 26.07.2018 itself, it is held that the disability that the applicant suffers from having already been opined by the Release Medical Board itself to be attributable to service has to have the net qualifying assessment

of the percentage of disablement @ 20% for life which is so directed to be treated as 20% for life to be rounded off and broad banded to 50% for life with effect from date of discharge with all consequential benefits in terms of the verdict of the Apex Court in ***Union of India v. Ram Avtar*** and the respondents are directed accordingly and directed to calculate the corrigendum PPO and issue the same. The arrears shall be disbursed to the applicant within three months of receipt of this order failing which it shall earn interest @ 6% p.a. till the actual date of payment. The OA is thus, disposed of."

10. Aggrieved thereby, the IAF is before us in the present writ petition.

11. We have heard Mr. Dev Pratap Shahi, learned Counsel for petitioner.

12. Mr. Shahi has drawn our attention to the statement of case in the report dated 26 July 2018 of the RMB, particularly to Clauses 2 and 5 (e), (f) and (h) thereof which read thus:-

"2. Was he in Low Medical Category (Y/N) :YES

If Yes (a) What was/were the disability/disabilities: PARTIAL TEAR ACL AND MEDIAL MENISCUS TEAR LEFT KNEE (Old) Z-09.0 Modified as ANTERIOR CRUCIATE LIGAMENT TEAR WITH MEDIAL AND LATERAL MENISCUS TEAR (LT) KNEE (OLD) S-83.2, Z-09.0

(b) What was his medical category and since when?: A4G4 (P) w.e.f 30 Oct 17. (Last Categorization Medical Board)

(c) How long has he been in lower medical category?- 06 Years"

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5(e) Does the Medical Board consider in probable that the operation/treatment would have cured the disability or reduced its

percentage? Yes

(f) If the reply to (e) is in affirmative, what is the probable percentage to which the disablement could be reduced by operation/treatment? No relevant data on probable percentage cure rate available; can only be commented upon post surgery.

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h) Does the Medical Board consider the individual's refusal to submit to operation/treatment reasonable? Give reason in support of the opinion specifying the operation/treatment recommended. Yes, given the risk involved in surgery and chances of persistence of the disability, the individual's refusal can be considered acceptable."

13. Mr. Shahi's contention is that, as the RMB has, in its response to Clause 5 (e), certified that it was probable that, had the respondent subjected himself to operation/treatment, his disability would either have been cured or its percentage reduced, the respondent was not justified in refusing to undergo surgery and, therefore, the IAF was justified in reducing the percentage of disability to 10% on that ground.

14. Having perused the report of the RMB holistically, we find ourselves unable to agree with Mr. Shahi.

15. Clause 5(e) answers, in the affirmative, the query as to whether the RMB "considered it probable that the operation/treatment would have cured the disability or reduced its percentage". In other words, all that the RMB has certified in its response to Clause 5(e) is that there was a probability that, if the respondent had undergone the surgery, the disability would have been cured, or its percentage reduced.

16. However, in response to the very next query 5(f), as to the possible percentage of reduction of disability, in the event of the respondent undergoing surgery, the RMB specifically stated that there was no relevant data on the probable percentage cure rate, which could be committed upon only post-surgery.

17. This response, in our opinion knocks the wind considerably out of the sails of the response to Clause 5(e). Most significantly, in its response to Clause 5(h), the RMB has regarded the refusal, by the respondent, to undergo the surgery as "acceptable", given the risk involved and chance of persistence of the disability.

18. To our mind, the reply of the RMB in response to Clause 5(h) is fatal to the case of the petitioners, and the Tribunal has correctly granted relief to the respondent.

19. Once the RMB has itself arrived at the subjective opinion that the respondent's refusal to subject himself to surgery was an acceptable refusal, given the risks of surgery and chances of persistence of the disability, it is a natural sequitur that the petitioner could not have treated the said refusal as a basis to reduce the percentage of disability from 20% to 10%.

20. We have also considered para 2 of the report of the RMB. We do not see how this can come to the aid of the petitioners.

21. According to Mr. Shahi, the responses to sub-clauses (b) and (c)

of Clause 2 of the report of the RMB indicates that, post sustaining of the disability, the respondent was in SHAPE-IV. He submits that as per instructions received by him, if the respondent had undergone surgery, he would have improved to SHAPE-I.

22. These are merely in the realm of conjecture. There is no such finding by the RMB. Rather, the RMB, as already noted, has found the refusal, by the respondent to subject himself to surgery, as acceptable in the facts of the case.

23. In that view of the matter, we are in complete agreement with the decision of the Tribunal that the respondent's percentage of disability would be entitled to be treated as 20% and not as 10%.

24. The corollary would be that, applying the broad banding principle approved by the Supreme Court in ***Ram Avtar***, the respondent would be entitled to treat the overall percentage of disability as 50% as was done by the Tribunal.

25. In that view of the matter, the decision by the Tribunal is that the percentage of disability sustained by the respondent was liable to be reckoned as 20% and not as 10% is perfectly a valid decision and, in any event, does not merit interference within the parameters of Article 226 of the Constitution of India.

26. The writ petition is accordingly dismissed in *limine*.

27. Compliance with the order of the Tribunal be ensured within a period of four weeks from today.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MARCH 18, 2025
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Click here to check corrigendum, if any