

**ARMED FORCES TRIBUNAL,  
REGIONAL BENCH,  
JABALPUR**

**OA/124/2013**

**Date of Order :03.05.2017**

**Hon'ble Mr. Justice Amar Saran, Judicial Member  
Hon'ble Lt Gen N.B. Singh, Administrative Member**

**Capt (Retd) Dilip Awasthi, S/o Late Dr. B P Awasthi, R/o B- 8/2,  
JDA Colony, Katanga Jabalpur**

**.....Applicant**

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of Army Staff, Army Headquarters, DHQ Post Office, New Delhi.
3. The Adjutant General, Adjutant General's Branch, Army Headquarters, RK Puram, New Delhi.
4. The Principal Chief Contoller, Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)
5. Army Group Insurance Fund, AJI Bhawan, Rao Tularam Marg, Post Bag No.14, Post Office Vasant Vihar, New Delhi, through its Secretary.

**..... Respondents**

Ld. Counsel appeared for the Applicant - **Shri KC Ghildiyal  
Advocate.**

Ld. Counsel appeared for the Respondents - **Shri RK Jaiswal,  
Central Govt. Counsel.**

## **ORDER**

### **Delivered by Hon'ble Lt Gen NB Singh, Member (A)**

1. This is an OA under Section 14 of the Armed Forces Act, 2007 filed by Capt Dilip Awasthi (Retd) claiming disability pension as well as benefit under Army Group Insurance Scheme, which was due to him after retirement from service w.e.f. 13<sup>th</sup> March, 1993. The factual matrix of the case is given in succeeding paras.
2. The applicant was commissioned in the Indian Army in Army Education Corps (AEC) on 31<sup>st</sup> March, 1972. During the Battle Physical Efficiency Test (BPET), while jumping across the 9 ft ditch, the applicant sustained fracture in both the legs. It was found that the applicant had suffered fracture Bilateral Calcaneum. A Court of Inquiry was held and the injury sustained by the applicant was held to be attributable to military service. He further submits that the injury sustained by him got aggravated during the course of employment and consequently he was operated for the same in January, 1987. He was then placed in a low medical category S1H1A3(L)P1E1 (Temporary). Subsequently, he was placed in low medical category A3 (Permanent) for the disability suffered by him.
3. On completion of approximately 21 years of service, the applicant sought voluntary retirement which was granted to him w.e.f. 13<sup>th</sup> March, 1993. Before retiring, he was subjected to Release Medical Board (RMB) during the course of which the disability was assessed at 60% and it was specifically mentioned in the opinion of the specialist that the applicant had suffered Bilateral Fracture Calcaneum in November, 1982 while negotiating the 9 ft ditch. Copy of the RMB has been attached as Appendix A-2 to the OA. The applicant states that at the time of his retirement he was suffering from a disability that was assessed at 60% and was therefore entitled to receive the disability pension as per the provisions of Para 173 of Pension Regulations for the Army, 1961. He further adds that in addition to the disability pension he was entitled for

grant of disability benefits under the Army Group Insurance Scheme. He also contends that ever since the injury, he has been living in continuous pain and suffering and as he fulfills the twin conditions of attributability and percentage for grant of disability pension, it was incumbent on the respondent No. 3 to grant him disability pension. He remained under the impression that his case has been processed for grant of disability pension and for some reasons, the same had not been sanctioned. However, in September, 2012 when on a visit to the office of Director AG/PS-4 at Army Headquarters, it came to his knowledge that he was entitled for disability pension and his case was never processed for the grant of the same. The concerned authorities have expressed their inability to process the case now. Under the AGI Scheme also he was entitled to benefits which have been denied to him illegally and arbitrarily. As the aforesaid facts came to light only in September, 2012, the instant OA has been filed and he could not raise his legitimate claim earlier because of lack of information. He submits that at least after filing of the OA the respondents should have corrected their mistake, however, the same has not been done. The respondents cannot be permitted to contest the OA on the grounds that no representation has been made through departmental channels. The applicant has prayed for disability pension to be paid to him at the rate of 100% w.e.f. 13.03.1993 along with arrears and interest at the rate of 24% and grant of all additional benefits under the AGI Scheme for the above mentioned period.

4. The respondents have submitted that the applicant has claimed disability pension w.e.f. 13.03.1993 and has not explained the delay properly in as much as he has not disclosed as to what efforts were made by him during the last 20 years to find out about his eligibility for getting disability pension. The averments made by the applicant are an afterthought and in view of the inordinate delay in filing the OA, the OA deserves to be dismissed on ground of limitation. They have contended that if the applicant was not granted disability pension he should have appealed against the same within six months which he has not done. As regards his second prayer in the OA for grant of disability benefits under the AGI Scheme, they have submitted that AGI is not covered under

Section 3(o) of the Army Act and Armed Forces Tribunal Act, 2007 and hence it is not maintainable.

5. They have gone on to state that at the time of retirement the Officer was brought before a duly constituted RMB on 07.01.1992 at Military Hospital, Jodhpur which viewed his disability i.e. suffering from Bilateral Fracture Calcaneum and the degree of disablement as being NA (Not Applicable) and Additional Director Medical Service (ADMS) Headquarters 12 Corps certifying his disability at 60% without commenting on its attributability or aggravation. His being a case of Premature Retirement (PMR), his disability claim was not processed as per para-50 of the Pension Regulations for the Army, 1961 (Part-I) which states—

*“Para-50. An officer who retires voluntarily shall not be eligible for an award on account of any disability.”*

6. They have brought out that the main eligibility conditions for Entitlement to Disability Pension as given in Regulation 48 of Pension Regulations (PR) for the Army, 1961 (Part-I) stipulates that:-

*“unless specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalidated out of service on account of disability which is either attributable to or aggravated by military service and the disability is assessed at 20% or more. A low medical category officer who retires on superannuation or on completion of tenure can also be granted disability pension under the provisions of Regulation 53 of PR if he fulfills the twin eligibility conditions as stated above.”*

7. With regard to Broad-Banding they have stated that pursuant to recommendations of the 5<sup>th</sup> Central Pay Commission regarding revision of disability pension, war injury pension, family pension etc. a policy letter No. 1(2)/97/D (Pen-C) dated 31.01.2001 was made applicable to Officers and Personnel Below Officer Rank (PBOR) of the Armed Forces retirees, invalidating or dying in harness on or after 1<sup>st</sup> January, 1996. Para- 7.2 of this letter provides for enhancement of disability pension as under:-

*“Para 7.2. Where an Armed Forces personnel is invalidated out under circumstances mentioned in para 4.1 above, the extent of disability or*

*functional incapacity shall be determined in the following manner for the purposes of computing the disability element.*

<b>Percentage of disability as assessed by invalidating medical board</b>	<b>Percentage to be reckoned for computing of disability element</b>
Less than 50	50
Between 50 and 75	75
Between 76 and 100.	100

8. It can be seen that the applicant had to be invalided out of service for becoming eligible for broad-banding for the disability pension. Furthermore, as per Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 31.01.2011, the Government decided that w.e.f. 01.07.2009 the concept of broad-banding shall be extended to Armed Forces Officers and PBORs who were invalided out of service prior to 01.01.1996 and were in receipt of disability/war pension. The respondents have pointed out that the officer has not been invalided out of service but had taken voluntary retirement at his own request and in order to be eligible for the above mentioned disability pension as well as broad-banding, the officer should have been invalided out of service.

9. They have reiterated that as per Para-50 of the Pension Regulations, 1961 an Officer who retires voluntarily is not eligible for an award of disability pension. As the applicant is pre 01.01.2006 PMR case, he is not entitled to disability element of disability pension and hence he is not eligible for the benefit of broad-banding. The concept of invalidation applies to a person whose tenure of service has been cut short by the employer owing to his disability before the date of superannuation in the cadre. They have further submitted that his case of disability pension was not required to be processed in terms of Para-50 of the PR, 1961 since he is not entitled to any disability pension having retired voluntarily. Therefore, the authorities did not process his case. They have reiterated that the RMB dated 07.01.1992 has not assigned any percentage of disability and certificate from Medical Branch Headquarters 12 Corps has mentioned his disability at 60% without any remarks as to its

attributability/aggravation and hence, he is not eligible for grant of disability pension.

10. They have concluded by submitting that the application is liable to be dismissed in terms of Hon'ble Supreme Court's judgment dated 01.02.2007 passed in case of *Lt Col PK Kapoor & NK Nariker* and Hon'ble AFT (Punjab) order dated 08.11.2012 passed in *OA 291/2011 in Col IS Roperia's* case. In the rejoinder the applicant has stated that he is a pre 01.01.2006 voluntarily retirement case and the Apex Court on 29<sup>th</sup> July, 2013 had held the decision of AFT, Principal Bench, Delhi that :-

*"Since the Government had granted benefit to all those who retired voluntarily after 01.01.2006, the same should be extended to pre 2006 retirees."*

*The Apex Court had dismissed the appeal of Govt. As such he is eligible for grant of disability pension.*

11. As regards the respondent's contention that AGI is not covered under Section 3 of Army Act and Armed Forces Tribunal Act, 2007 he states that he is only seeking disability benefits and not disability pension from AGI. He has referred to a Brochure on terminal benefits on retirement (Officers) issued by Additional Directorate General, Personnel Services, Adjutant General Branch, Army Headquarters, Para-13 which states that Officers are entitled to disability benefits due to / on being invalided out of service at the rate of 60% / Rs.1,05,000/-, hence contention of the respondents that AGI is not covered under Army Act of Armed Forces Tribunal Act, 2007 is misleading. He further states that his RMB was held on 13<sup>th</sup> March, 1993 at Military Hospital, Jodhpur and not 7<sup>th</sup> January, 1992 as stated by the respondents. He has further contended that the respondents by giving reference of ***Lt Col PK Kapoor and NK Narekar*** have mislead the Court. Disability pension is admissible in case of those persons who proceed on retirement after rendering prescribed period of service for the rank in which they retired. In the present case, the applicant had completed 20 years 11 months and 13 days of service. He has placed reliance on the Apex Court judgment on

14<sup>th</sup> August, 2014 (***Sukhvinder Singh Vs Uol &Others***) by referring to the following :-

*“Can the authorities be permitted to portray that whilst a pension has so minor a disability as to disentitle him for compensation, yet suffer from a disability that is major or serious enough to snatch away his employment,” says the bench comprising Justice Vikramjit Sen and Justice Shiva Kiriti Singh.*

12. He has brought out that his case is different from other cases since after being promoted to the rank of Substantive Major w.e.f. 13.07.1984 till 22.01.1993, the applicant was asked to produce the authority for passing Part-D exam. The applicant gave the requisite authority (Gazette notification 749 dated 18.03.1995 and ‘Army List’ Part-II published by Ministry of Defence in 1986-87). He was shocked to receive a letter from the respondent No.3 asking him to proceed on voluntary retirement or else action will be taken as per Army Rule 13-A. He had to take voluntary retirement under duress and his RMB was held on 13.03.1993, the date when he was finally struck of strength (sos) from the Army. The applicant requested for interview of the Military Secretary on 26.02.1993 which was denied and he was forced to retire vide MS Branch letter No. 38178/263/04/MSPR dated 12<sup>th</sup> February, 1993. He was just given 10 days time to proceed on retirement. The applicant was constrained to file a writ petition in M.P. High Court on 07.09.1993 regarding recoveries being made from his salary which was stayed by the Hon’ble High Court. Finally the writ petition was disposed of with directions that no recovery shall be made from the applicant. He has concluded by referring to the case of *Col V Mukesh Kumar*, wherein on 22<sup>nd</sup> Sept 2014 Justice V. Periya Karuppiyah and Lt Gen K Surendra Nath have observed that-

*“There is no difference between post and pre retirees on 01.01.2006 and he should be awarded 30% disability pension for the disability sustained by him and pension must be given to him within three months.”*

13. The respondents in their reply presented before the Court a copy of the RMB proceedings dated 13 March 1993 and accepted the fact that the

applicant's disability was assessed as 60% for two years and attributable/ aggravated by military service.

### **ARGUMENTS**

14. Ld counsel for the applicant Shri KC Ghildiyal commenced by inviting the attention of the Court to the Release Medical Board (RMB) proceedings. He pointed that there is no dispute that the disability as mentioned in RMB is greater than 20%. The medical documents also show that the disability is attributable to military service. He was not getting the disability pension as per extant rules as he had taken voluntary retirement and was a pre 1996 retiree. However, the situation has changed w.e.f. 2009 wherein a Government letter was issued that post 2006 retirees and PMR cases will also be eligible for grant of disability pension. Subsequently, vide judgment passed by the AFT, Regional Bench Chennai, this benefit was passed on to pre 01.01.2006 cases. He presented to the Court a letter dated 03.08.2010 stating that as per this letter, as and when pre 2006 retirees file a case for grant of rounding of, the same will be processed for Government sanction and not contested, while those who have completed full pensionable service or superannuated will get the same without going for Government sanction. He also presented before the Court a copy of the Regulation for Medical Services, 2010 and drew the attention of the Court to Para- 422(I)(iii)(aa) which is reproduced below :-

**Para 422(I)(iii) : RSMB.** RSMB will be dispensed with

“(aa) For pre Jan 1996 disability pensioner. Reassessment Medical Board will be held in hospitals which were authorized to hold RSMB. The assessment made will be final and for life unless the individual himself seeks for a review. Such a review will be carried out by Review Medical Board, composition of which is given in para 482. The percentage of disability assessed by the Review Medical Board will be final.”

15. At this point the court noted that the RMB proceedings had assessed the disability as 60% for two years. Referring to Para 422(K)(i), Shri Ghildiyal mentioned that for injury cases, the percentage of disability recommended by the RMB and approved by the opinion of higher medical



authority would be treated as final unless the individual request for a review. Hence, in the case, the applicant's disability of 60% for a period of two years should be treated as final for life and no period should be fixed for it. He concluded by stating that the applicant's case is a fit case for grant of disability pension as the applicant had suffered the disability while on training and it was assessed at 60%. In view of the large number of judgments extending this benefit to PMR cases also, he should be granted disability pension at the rate of 75% (after broad banding) for life.

16. Appearing on behalf of the respondents, Shri RK Jaiswal, Ld counsel and Maj Gourav Verma, OIC Legal Cell reiterated their earlier stance in the pleadings that the applicant being a case of PMR was not eligible for grant of disability pension. They presented before the Court certain case laws where RAMB (Re-Assessment Medical Board) was held after the retirement of the concerned person. They relented that at best, in view of the changed situation he could be eligible for grant of disability pension for two years and subsequently present himself for a RAMB.

17. We have heard the contentions of both sides, perused the pleadings and the written arguments based on which the following points have emerged for consideration :-

- (a) Is the applicant eligible for grant of disability pension (DP) @ 75 % as broad banded and disability benefit cover from AGIF.
- (b) If granted, is the DP applicable for life?

18. The applicant had to take premature retirement at his own request after putting in nearly 21 years of service with twin disabilities; Fracture Calcaneum and OA both knees, assessed at 60 percent for two years, which was attributable to military service, as recorded in the RMB proceedings dated 13 Mar 1993 held at Military Hospital Jodhpur. At the time of his PMR the stated policy on DP for PMR case was covered by regulation 50 of PR Army 1961 and as such he was not eligible for grant of DP. Accordingly his case for grant of DP was rightly not processed by the respondents. However, this policy was changed by the Govt by issue of a policy letter No 16 (5)/2008/D(Pen/Policy) dated 29 Sep 2009 wherein it was provided that disability element could be given to those Armed

Forces personnel at the time of discharge (whether voluntary or otherwise), who are otherwise retained in service despite disability, which is accepted as attributable to military service. However the provisions of this letter were made applicable to those personnel who retired or were discharged from service on or after 01.01.2006. For clarity, the same is reproduced below:-

“ No. 165(5)/2008/D(Pen/Policy)  
Government of India  
Ministry of Defence  
Deptt. Of Ex-Servicemen  
Welfare

New Delhi 29<sup>th</sup> Sept. 2009

To

*The Chief of the Army Staff  
The Chief of the Naval Staff  
The Chief of the Air Staff*

*Subject : Implementation of Government decision on the recommendation of the Sixth Pay Commission-Revision of provisions regulating Pensionary Awards relating to disability pension/war injury pension etc. for the Armed Forces Offices and Personnel Below Officer Rank (PBOR) on voluntary retirement/discharge on own request on or after 1.1.2006.*

Sir,

- 1. The undersigned is directed to refer to Note below Para 8 and para 11 of the Ministry's letter No.1(2)/97/D(Pen-C) dated 31.1.2011, wherein it has been provided that Armed Forces personnel who retire voluntarily or seek discharge on request shall not be eligible for any award on account of disability.*
- 2. In pursuance of Government decision on the recommendations of the Sixth Pay Commission vide Para 5.1.1969 of their Report, President if pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntary or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.*
- 3. The provisions of this letter shall apply to the Armed Forces personnel who are retired/discharged from service on or after 1.1.2006.*
- 4. Pension Regulations for the three Services will be amended in due course.*

5. This issue with the concurrence of Ministry of Defence (fin) vide their U.O. NO. 3545(fin/Pen) dated 29.09.2009.

6. Hindi version will follow.

Yours faithfully,

(Harbans Singh)

(Director/Pen/Policy)

Copy to :-

As per standard list.”

19. Subsequently, a policy was issued by the respondents extending the aforesaid benefits to Personnel Below Officer Rank (PBOR) vide B/39022/Mis/AG/PS-4(L)/BC dated 03. 08.2010. The said policy letter is reproduced below for clarity. It is obvious that this beneficial provision had not yet been extended to pre 2006 officer retirees.

‘Tele-23335048

Addl Dte Gen Personnel Services  
Adjutant General's Branch  
Integrated HQ of MoD (Army)  
DHO PO, New Delhi-11

B/39022/Mis/AG/PS-4 (L)/BC

03 Aug 2010

All Legal Cells

All line Dtes

GRANT OF DISABILITY PENSION TO PREMATURE RETIREMENT  
CASES PROCEEDING ON DISCHARGE PRIOR TO 01 JAN 2006

1. Further to this office note No.A/39022/Miosc/AG/PS-4(Legal) dt 22 Feb 2010 on subject matter.

2. It is clarified that as and when a pre-2006 retiree PBOR files a court case to claim disability pension which was denied to him merely because he had proceeded on Premature Retirement, such cases will be immediately processed for Government Sanction through respective Line Dtes and Not contested. Government Sanctions in which cases will also be proposed in the same manner as that followed in cases of Government Sanctions issued in compliance of court cases.

3. This arrangement will be effective till MoD/D(Pen/Legal) formulated and issues comprehensive Govt orders.

4. It is reiterated that only those cases where disability pension was denied to a PBOR solely on the grounds that he had processed on PMR will be processed for sanction and will not be contested. Which

*implies that as and when a PBOR files a case of similar nature their case files will be processed for Govt sanction without awaiting court order.*

*5. Contents of this letter are not applicable to officers as PRA, Rule 50 has been upheld by Hon'ble Supreme Court in judgment dt 06 July 2010 in case of Lt Col Ajay Wahi (SLPNo.25586/2004, Civil Appeal No.1002/2006).*

*6. All line Dtes are requested to give vide publicity to this letter amongst all Record Offices.*

*(Ajay Sharma)  
Col  
Dir, Ag/PS-4 (Legal)  
For Adjutant General*

*Copy to :  
MoD/D(Pen/Legal)  
JAG Deptt.*

20. The Principal Bench of Armed forces Tribunal in OA No 336 of 2011 (Major (Retd) Rajesh Kumar Bhardwaj vs Union of India and Others) held that the artificial distinction which had sought to be made between pre and post 2001 retirees was without a rational basis and struck down clause 3 of the notification dated 29.09.2009. This implied that officers who had proceeded on PMR before 01.01.2006 were also eligible for DP just like officers who had taken PMR post 01.01.2006. An appeal against the said judgment of the Hon'ble Principal Bench was dismissed by the Apex Court as barred by limitation by order dated 24.03.2014.

21. Hence, we are of the view that in the changed circumstances the applicant is eligible for grant of DP in accordance with the aforesaid judgment of the Hon'ble Principal Bench. However, we would like to refer to the RMB proceedings (supra) wherein it has been stated on page 3 Part III that the first disability "Bilateral Fracture Calcaneum" is attributable to military service and the second disability "OA both knee" is aggravated by military service. Later at para 4 of the same Part III, it is stated that the percentage of disablement is 40% and 30 % for both disabilities, probable duration of disablement is 2 years and the cumulative assessment for all disabilities is 60%. Opinion of the Medical Board is reproduced below:-

**OPINION OF THE MEDICAL BOARD**

1.	<i>Did the disability/ies exist before entering service?</i>			<b>No</b>
2.	<p><i>(a) In respect of each disability the Medical Board on the evidence before it will express its view as to whether</i></p> <p><i>(i) It is attributable to service during peace or under filed service conditions : or</i></p> <p><i>(ii) It has been aggravated thereby and remains so : or</i></p> <p><i>(iii) It is not connected with service.</i></p> <p><i>The Board should state fully the reasons in regard to each disability on which its opinion is based.</i></p>			
		<b>A</b>	<b>B</b>	<b>C</b>
1) BILATERAL FRACTURE CALCANIUM (OPTD) OLD SUBTLAR ARTHRODESIS & RT DONE (V – 67)		1) YES	1) NO	1) NO
2) OA BOTH KNEE		2) NO	2) YES	2) NO
	<p><i>(b) In respect of each disability shown as attributable under A, the Board should state fully, the specific condition and period in service which caused the disability.</i></p> <p>1) Yes, It is attributable to military service vide SAFT -2006 dated 10 Jan 2003. 2) NO.</p>			
	<p><i>(c) In respect of each disability shown as aggravated under B, the Board should state fully.</i></p> <p><i>(i) The specific condition and period in service which aggravated the disability.</i></p> <p>1) NA 2) Yes, due to stress and strain of military service.</p>			
	<p><i>(ii) Whether the effects of such aggravation still persist.</i></p> <p>1) NA 2) Yes</p>			
	<p><i>(iii) If the answer (ii) is affirmative, whether effect of aggravation will persist for a material period.</i></p> <p>1) NA 2) Yes</p>			
	<p><i>(d) In the case of a disability under C, the Board should state what exactly in their opinion is the cause thereof.</i></p> <p>1) NA 2) Yes</p>			
3.	<p><i>(a) Was the disability attributable to the individual's own negligence or misconduct ? If so, in what way?</i></p> <p>1) NO 2) NO</p>			

<p><i>(b) If not attributable, was it aggravated by negligence or misconduct? If so, in what way and to what percentage of a total disablement.</i></p> <p>1) NO 2) NO</p>										
<p><i>(c) Has the individual refused to undergo operation/ treatment? If so individuals reasons would be recorded.</i></p> <p>1) NO 2) NO</p> <p><i>NOTE : In case of refusal of operation / treatment a certificate from the individual will be attached.</i></p>										
<p><i>(d) Has the effect of the refusal been explained to and fully understood by him / her viz, a reduction indicating the entire withholding of any disability pension to which he / she might otherwise be entitled?</i></p>										
<p><i>(e) Do the medical board consider it probable that the operation / treatment would have cured the disability or reduced its percentage?</i></p>										
<p><i>(f) .....</i></p>										
<p><i>(g) .....</i></p>										
<p><i>(h) .....</i></p>										
<p><b>4. What is present degree of disablement as compared with a healthy person of the same age same sex.</b> <i>(Percentage will be expressed as Nil or as follows) :</i></p> <p><b>1-5%,6-10%,11-14%,15-19% and thereafter in multiples of ten from 20% to 100%.</b></p>										
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;"><b>Query (as numbered in question 1 , part II)</b></th> <th style="width: 15%;"><i>Percentage of disablement</i></th> <th style="width: 15%;"><i>Probable duration of this degree of disablement</i></th> <th style="width: 20%;"><i>Composite assessment (all disabilities)</i></th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"> <p>1) <b>BILATERAL FRACTURE CALCANIUM (OPTD) OLD SUBTLAR ARTHRODESIS &amp; RT DONE (V – 67)</b></p> </td> <td style="text-align: center; padding: 5px;"> <p><b>40% (forty percent)</b></p> </td> <td rowspan="2" style="text-align: center; padding: 5px;"> <p><b>1 &amp; 2 Two years</b></p> </td> <td rowspan="2" style="text-align: center; padding: 5px;"> <p><b>60% (sixty percent)</b></p> </td> </tr> <tr> <td style="padding: 5px;"> <p>2) <b>OA BOTH KNEE</b></p> </td> <td style="text-align: center; padding: 5px;"> <p><b>30% (thirty percent)</b></p> </td> </tr> </tbody> </table>	<b>Query (as numbered in question 1 , part II)</b>	<i>Percentage of disablement</i>	<i>Probable duration of this degree of disablement</i>	<i>Composite assessment (all disabilities)</i>	<p>1) <b>BILATERAL FRACTURE CALCANIUM (OPTD) OLD SUBTLAR ARTHRODESIS &amp; RT DONE (V – 67)</b></p>	<p><b>40% (forty percent)</b></p>	<p><b>1 &amp; 2 Two years</b></p>	<p><b>60% (sixty percent)</b></p>	<p>2) <b>OA BOTH KNEE</b></p>	<p><b>30% (thirty percent)</b></p>
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<p>2) <b>OA BOTH KNEE</b></p>	<p><b>30% (thirty percent)</b></p>									

**CERTIFICATE**

Certified that No. IC 27183- L Rank Capt Dilip Awasthi Unit HQ 769 (I) AD Bde who is being Release / Invalided out of service in Medical Category S1H1A3P1E1 does not require any further hospitalization and is FIT for suitable employment in civil.

This Certificate is issued without any legal responsibility.

Diag:

- 1) **BILATERAL FRACTURE CALCANIUM (OPTD) OLD SUBTLAR ARTHRODESIS & RT DONE (V – 67)**
- 2) **OA BOTH KNEE**

M.H.Jodhpur

Sdxxxxxx  
(UC Parida)  
Lt Col  
Registrar and OC Tps  
MH Jodhpur.

**CERTIFICATE FOR COMMUTATION OF PENSION**

(To be as included as para 7 in part III AFMSF-16)

The Medical Board have carefully examined. IC 27183- L Capt Dilip Awasthi are of the opinion that:-

The individual is Suffering from 1) BILATERAL FRACTURE CALCANIUM (OPTD) OLD SUBTLAR ARTHRODESIS & RT DONE (V – 67), 2) OA BOTH KNEE but is otherwise in good bodily health and has the prospect of an average duration of life. Commutation of pension in his / her case is therefore, recommended for acceptance.

Sdxxxxxx  
(UC Parida)  
Lt Col  
Registrar and OC Tps  
MH Jodhpur.

22. It is clear from para 4 that the probable duration of this degree of disablement is 2 years. Hence we of the view that the applicant is entitled for DP @ 60% for 2 years and denial of the same by the respondents is not sustainable.

23. Learned counsel for the applicant had brought out during the arguments that in view of the policy guidelines contained in the regulations for the Medical Services of the Armed Forces 2010, the applicant's case fell within the ambit of injury cases and hence the assessment of 60% should be considered as final for life. For sake of clarity the relevant paras of the regulation are reproduced below:-

**422**

(j) Medical Boards which assemble to reassess the degree of disability will confine their remarks to :

(i) Whether the individual is still suffering from the disability on account of which the individual was invalided or from its effects.

(ii) Whether the disability, on account of which the individual was invalided, has increased or decreased and the present degree of disablement on that account. They will not record opinion with regard to the origin of such disabilities when original invaliding boards have recorded a definite opinion to this point.

(k) **Injury Cases**

(i) Percentage of disability recommended by IMB/RMB and approved by the next higher Medical Authority, would be treated as final unless the individual requests for a review.

(ii) Injury cases will not be reviewed/ adjudicated by DDG AFMS (Pens)

(iii) Approving authority will judiciously examine the percentage of disability recommended by Medical Boards before approval. In case the approving authority feels that the assessment is abnormally high or low, the board proceedings back to medical boards for necessary rectification, if required the approving authority may physically examine the individual or get him re-examined to ascertain the correct assessment. The same will be applicable for disease cases also.

(l) **Disease Cases**

(i) **Disabilities not permanent in nature.** Initial assessment will be made for 2-5 years (as deemed fit by IMB/RMB). The individual will be asked to report for a review after the said period. Necessary endorsement to the effect will be made in IMB/RMB proceedings.



Assessment made during their review will be final and for life unless the individual himself seeks for review. This review will be carried out by Appeal Medical Board, the composition of which is given in para 483.

(ii) **Constant Attendant Allowance (CAA).** Mention must be made regarding constant attendant allowance in all cases of disablement assessed as 100%. Disabilities which are permanent in nature (when 100% disablement and CAA recommended e.g. Blind case) CAA should be recommended for life. However, in other cases when a review is recommended, the continuance of CAA also should be commented upon.

(iii) : **RSMB.** RSMB will be dispensed with

(aa) For pre Jan 1996 disability pensioner. Reassessment Medical Board will be held in hospitals which were authorized to hold RSMB. The assessment made will be final and for life unless the individual himself seeks for a review. Such a review will be carried out by Review Medical Board, composition of which is given in para 482. The percentage of disability assessed by the Review Medical Board will be final.”

(ab) For disability pensioners in service on or after 01 Jan 1996. Cases which have been finalized prior to 07 Feb 2001 will not be reopened. However, those cases which will report for RSMB, Reassessment Medical Board as mentioned in sub sub para (aa) above will held which will be final and for life unless the individual himself seeks for review. In such cases Review Medical Board held as mentioned in sub para (aa) above will be held.

24. If we accept the contention of the learned counsel for the applicant then the applicant`s case ends with grant of disability pension at the rate of 60% for two years. However we notice that the case of the applicant does not fall exclusively under the category of Injury Cases, but is a combination of an injury and a disease .Hence the applicant is entitled for a Reassessment Medical Board (RAMB) vide para (l) (iii) (aa) above as he is a pre 1996 pensioner. The assessment made in the RAMB will be final and for life unless the applicant himself seeks a review. We therefore are inclined to allow the applicant to be subjected to a Reassessment Medical Board for a final assessment of both the disabilities.

25. We now come to the last issue of broad banding of the disability pension from 60% to 75% in case of the applicant. It is true that the applicant was neither invalidated out of service nor discharged /retired on attaining age of retirement or on completion of tenure. However, he was ordered to proceed on PMR vide MS Branch letter no 38178/263/04/MSPR dated 12 Feb 1993. The implication of this action was that his tenure was cut short because as per policy in vogue he could not have been retained in service for a period beyond 20 years for not clearing mandatory promotion examinations. He therefore comes under the category of personnel retired/discharged on completion of stipulated tenure. The fact that was relevant was that he too was leaving the service with a 60% disability which was found to be attributable / aggravated by military service like any other personnel who was invalidated / retired from service. Only the circumstances of the exit differed. He was constrained to seek voluntary retirement because of not having cleared part 'D' examination. Denial of broad banding to the applicant would therefore be inequitable as he too has to live with a disability all his life, like others who had exited for reasons like invalidment/completion of prescribed service/age. If those personnel were given the benefit, the applicant too is entitled for the same. The issue stands concluded by the judgements of Hon'ble Supreme Court in Civil Appeal No 418 of 2012 titled as Uol & Others Vs Ram Avtar decided on 10.12.2014 and this Tribunal in case of JSS Kakkar Vs Uol & Others in OA No 107/2016 in ref MA No 431/2016. We therefore hold that the applicant is entitled to the benefit of broad banding upto 75%, as he was constrained to leave service at the end of minimum allowed term of engagement of 20 years.

26. The issue of AGIF disability benefits was not pressed by the counsel for the applicant. However, we would like to mention that the AGIF (Respondent No.5) in their reply have mentioned that as per extant rules, personnel who have proceeded on PMR are not entitled to the said benefits –

**“Para 59 (iii)- Personnel proceeding on pension/discharge/release at their own request or after expressing unwillingness to serve in sheltered appointment being in permanent 'SHAPE-5' medical category or due to any other reason.”**

27. They have further submitted that admissible maturity benefits of Rs.46526/- have been paid to the applicant on 16<sup>th</sup> May 1993.

28. Having considered the aforesaid & giving our best consideration to the facts, rules and case laws, we are of the opinion that the applicant is entitled to partial relief for the time being. Hence the OA is **allowed** in part. The respondents are directed to grant disability pension @ 75% to the applicant for a period of two years from the date of notification dated 29.09.2009. In addition, the applicant will be subjected to a RAMB within the next three months to reassess his disability (increase / decrease / present degree of disablement) based on which the respondents will decide on continuation of DP or otherwise. All actions to be completed within next four months. In case of default, interest @ 10% will be payable by the respondents. No order as to costs.

**(Lt Gen N.B. Singh)**  
**Member (A)**

**(Justice Amar Saran)**  
**Member (J)**

Sarkar/03.05.2017