

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 404 of 2018

Tuesday, this the 02nd day of April, 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

No. 6926910-M Naik Mahendra Singh (Retd.), Son of Shri (Late) Raghbir Singh, Resident of : H No. 464/404, Gali No. 8, New Govindpuri, Kankar Khera, Post – Meerut Cantt., District Meerut (U.P.)-250001.

..... Applicant

Ld. Counsel for the : **Shri Shailendra Kumar Singh**, Advocate.
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block-III, New Delhi-110011.
3. OIC Records, Army Ordnance Corps Records Office, PIN-900453, C/o 56 APO.
4. PCDA (Pensions), Draupadi Ghat, Allahabad-211014.

.....**Respondents**

Ld. Counsel for the : **Shri V.P.S. Vats**,
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

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

- “(A) To quash or set aside the Respondents No.3 letter dated 07 Feb 2007 (Annexure A-1 & Impugned Order) being bad in the eye of law.*
- (B) To issue order or directions to the respondents to grant disability pension to the applicant from his date of discharge i.e. with effect from 01 Oct 2006 and to pay arrears along with suitable rate of interest as deemed fit by this Hon’ble Tribunal.*
- (C) To issue order or directions to the respondents to grant benefit of rounding off to the tune of 50% in terms of Govt. of India letter dated 31 Jan 2001 and Hon’ble Apex Court Order in Ram Avatar Case with effect from 01 Oct 2006.*
- (D) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.”*

2. Briefly stated facts of the case are that the applicant was enrolled in Army Ordnance Corps in Indian Army on 19.02.1987 and was discharged on 30.09.2006 at his own request on compassionate ground in Low Medical Category P2 (Permanent) under Rule 13(3)III(iv) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Command Hospital (Northern Command), Udhampur on

09.09.2000 assessed his disability '**CERVICAL PIVD WITH THECAL SAC COMPRESSION AND NERVE ROOT AT C3-4 M-5**' @ 30% for life and opined the disability to be aggravated by military service due to physical stress and strain of military service. The claim of disability pension was rejected by the respondents vide letter 07.02.2007 on the ground that the applicant has been discharged from service at his own request, on compassionate grounds, before fulfilling the conditions of his enrolment. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Indian Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during the service and the RMB has opined that the disease of the applicant is aggravated by military service due to physical stress and strain of military service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as such the applicant is entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant i.e. '**CERVICAL PIVD**

WITH THECAL SAC COMPRESSION AND NERVE ROOT AT C3-4 M-5' has been conceded as aggravated @30% for life by RMB. However, his claim for grant of disability pension was rejected on the ground that the applicant has been discharged pre-maturely from service at his own request, on compassionate grounds before fulfilling the conditions of his enrolment. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Invaliding Medical Board proceedings. The questions which need to be answered are of two folds :-

- (a) Whether the applicant is entitled for disability pension?
- (b) If found eligible for disability pension, what is the date from which applicant would become eligible?

6. This is a case where the RMB had conceded the disease of the applicant as Aggravated by military service @ 30% for life. However, the respondents have rejected the disability pension claim of applicant on the ground of pre-mature discharge on own request.

7. It is a fact that before 2006 i.e. pre-VI Central Pay Commission, as per the rules existing at that time, pre-mature discharge at own request made a soldier ineligible for disability pension. However, it is also a fact that with effect from 01.01.2006,

as per recommendation of Sixth Central Pay Commission, soldiers proceeding on pre-mature discharge are also eligible for disability pension. This aspect of VI Central Pay Commission whereby Pre-mature discharge cases also become eligible for disability pension was clarified by Ministry of Defence letter No. 16(5)/2008/D (Pen/Policy) dated 29.09.2009 and Principal Controller of Defence Accounts (Pensions), Allahabad Circular No. 433 dated 25.03.2010.

8. Thus in light of the law already settled for pre-mature retirees claiming disability pension, we set aside the order dated 07.02.2007 of respondents by means of which the claim of the disability pension of applicant was rejected. We are surprised that despite a clear Government Order to the three service Chiefs in 2009 and a Circular by Principal Controller of Defence Accounts (Pensions), Allahabad addressed to all Record Offices in 2010, how the concerned Record Office has failed to extend a Government benefit to its own retired soldier, till date and the applicant has been forced to litigate in 2018. We are particularly concerned that the applicant has written an application to Record Office on 21.10.2012 requesting for revised Pension as per VI Central Pay Commission and grant of disability pension as per VI Central Pay Commission recommendations. We have noted that the Record Office has replied this letter vide their letter dated 08.11.2012 (Annexure A-7 to Original Application). However, the

Record Office has avoided any response/advise to the applicant on disability pension and have restricted themselves on VI Central Pay Commission Pay revision only.

9. In view of the above, we are of the considered opinion that the applicant is prima facie entitled to disability pension from the date of his discharge.

10. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014). In this Judgment the Hon'ble Apex Court nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision is excerpted below:-

“4. By the present set of appeals, the appellant (s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who

is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. *We have heard Learned Counsel for the parties to the lis.*

6. *We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.*

7. *The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.*

8. *This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."*

11. 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."

12. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Shiv Dass (supra)***, we are of the considered view that benefit of rounding off of disability pension @30% for life to be rounded off to 50% for life may be extended to the applicant from three years before the date of filing this Original Application.

13. In view of the above, the **Original Application No. 404 of 2018** deserves to be partly allowed, hence **partly allowed**. The order dated 07.02.2007, enclosed at Annexure A-1 of the Original Application, is set aside. The respondents are directed to grant disability element of pension to the applicant @30% for life w.e.f. 21.10.2012 i.e. the date on which the applicant took up his case for disability element with Record Office. His disability element of 30% for life would stand rounded off to 50% for life w.e.f. three years preceding the date of filing this O.A. The date of filing this Original Application is 19.12.2017. The respondents are 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 @ 9% per annum till actual payment.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

Dated: April, 2019

AKD/-

(Justice S.V.S. Rathore)
Member (J)