

RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO 1**O.A. No. 220 of 2013****Monday, this the 23rd day of November, 2015****"Hon'ble Mr. Justice Virendra Kumar DIXIT, Judicial Member
Hon'ble Lt Gen Gyan Bhushan, Administrative Member"**EX Major Sabhajeet Dubey IC- 23834Y R/o Opposite Tehsil Mariahu
District – Jaunpur **....Applicant**

Versus

1. The Union of India, through the Secretary, Ministry of Defence
(D.H.Q.) Post Office South Block, New Delhi.
2. The Additional Director General (Personnel Services).
Adjutant General's Branch
Army Head Quarters, Sena Bhawan
D.H.Q. Post Office, South Block, New Delhi
3. The Additional Directorate General Man Power
(Policy and Planning) MP 5 (b)
Adjutant General's Branch
Army Head Quarters, Room No. 86, wing no. 7
West Block – III, R.K. Puram,
New Delhi - 110066
4. The Principal Controller of Defence Accounts (Pensions), Draupadi
Ghat, Allahabad.
5. The Commanding Officer,
881 Light Regiment (Artillery
C/o 56 A.P.O. **..... Respondents**

Ld. Counsel appeared for the Applicant - Applicant in person**Ld. Counsel appeared for the Respondent - Shri Mukund Tewari
Central Govt
Standing Counsel**

ORDER

“Per Hon’ble Mr. Justice Virendra Kumar DIXIT, Judicial Member”

1. Present Original Application has been filed on behalf of the Applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the following reliefs-

“(a) Issue a suitable order or direction calling for the records of the case and set aside the orders dated 10.09.1986 and 11.03.2010 (Annexure Nos. 3 and 6 to the Original Application-(First compilation) and other connected and consequential orders passed in the case.

(aa) Issue a suitable order or direction to the respondent to pay disability pension to the applicant at the rate of 30% as diagnosed by the invaliding medical Board and to subject the applicant to review medical board in order to assess the current percentage of disability and thereafter, pay the current disability pensions in accordance with rounding off provisions as provided in the government of India notification dated 31.01.2001, alongwith arrears thereon @10% per annum.

(b) Issue a suitable order or direction to the respondents to grant disability pension to the Applicant at the rate of 50% in view of the notification dated 31.01.2001 issued by the Government of India which provides for rounding up or broad-banding of the disability right from the date of his discharge i.e. 20.03.1985.

(c) Issue any other and further order which this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the case.

(d) To award costs of this application to the applicant.”

2. The facts of the case shorn of unnecessary details are that the Applicant was enrolled in the Indian Army as Sepoy on 30.03.1962 and was discharged on seeking voluntary retirement on 20.03.1985 on account of disability which was diagnosed as Bilateral Osteo Arthritis (both knee). The Medical Board which examined the Applicant quantified his disability at 30% for two years at the same time opining

that it was attributable to Military service. The claim for disability pension was rejected by means of letter dated 10.09.1986 issued by Addl Director General (Personnel Services), A.G's Branch AHQ Sena Bhawan, D.H.Q Post office, New Delhi (Annexure no 3 to the O.A). Thereafter, the Applicant remained tight-lipped till 11.03.2010 on which date he preferred a representation pursuant to Notification issued by Govt of India dated 29.9.2009 which had its genesis in the recommendations made by 6th Pay Commission envisaging provision for disability pension to those who had sought voluntary retirement. The said representation culminated in being rejected again vide order contained in two letters dated 11.03.2010 and 16.03.2010 (Annexures 6 and 7 to the O.A.), ostensibly regard being had to the provisions of Para 50 of Pension Regulations for the Army, 1961, Part-I which envisaged that an officer proceeding on voluntary/premature retirement is not entitled to disability pension, even if he otherwise fulfills the twin eligibility conditions for the same. It is in the above perspective that the present Original Application has been instituted on 30.11.2010. It may be noted that delay in filing the Application was condoned vide order dated 29.07.2013.

3. We have heard the Applicant who appeared in person as also Learned Counsel appearing for Union of India. We have also been taken through the materials on record.

4. The quintessence of the submissions made by the Applicant is that he was denied disability pension merely on the ground that he had sought voluntarily retirement on account of disability which was opined to be attributable to military service by the Medical Board. He further submitted that the PCDA (P) had rejected the claim for disability pension in the teeth of the opinion of the Medical Board. He

also submitted that in view of catena of decisions of Hon'ble The Apex Court, it is no more open to the authorities to reject the claim on this count.

5. Per contra, Learned Counsel for the Respondents buttressed the action of the Respondents in rejecting the claim for disability pension by referring to the provisions of Para 50 of the Pension Regulation for the Army Part I, 1961. He further submitted that the assessment and opinion of the Medical Board is only recommendatory in nature as per Rule 17 (b) of Entitlement Rules to Causality Pensionary Awards to the Armed Forces Personnel, 1982 (E.R 82) and the same is subject to review by the competent medical authorities as stipulated in Rules 17 (a) and 27 (c) thereof. He further submitted that the proceedings of the Medical Board alongwith other medical documents are examined by the competent Medical and Administrative Authorities and on the basis of their recommendations, the claim for disability pension is either accepted or rejected. He further submitted that Para 50 aforesaid clearly postulates that an officer proceeding on voluntary/premature retirement is not entitled to disability pension even if he otherwise fulfills the twin eligibility conditions for the same.

6. In connection with the above, we feel called to refer to the judgment of the Armed Forces Tribunal, Principal Bench at New Delhi, in OA No. 336 of 2011 (with OA Nos. 205/11 & 189/11) Maj (Retd) Rajesh Kumar Bhardwaj v. UOI and others dated 7.2.2012 in which reference was made to Government Notification dated 29.9.2009 whereby the benefits of disability pension to the persons who retired/discharge on or after 01.01.2006 irrespective of the fact that they sought voluntary retirement were allowed.

7. The observations of the Principal Bench being relevant are quoted below.

"As per this notification, the benefit has been extended to the Armed Forces personnel as mentioned in paragraph no. 2 of this notification but in paragraph no. 3, they have said that this will be applicable from 01.01.2006 i.e. the persons who have sought voluntary retirement on or after 01.01.2006 will be benefited and rest will not be benefited. Petitioner has retired prior to 01.01.2006, therefore, he has been denied the benefit on account of cut-off date as per notification dated 29.09.2009."

8. The further observation of the Principal Bench referring to the Notification dated 3.8.2010 being relevant are also quoted below.

"It has been 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 Pre-Mature 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 processed in the same manner as that followed in cases of Government sanctions issued in compliance of court cases. That means Government has relaxed the condition for the PBOR, even if they sought voluntary retirement prior to 2006 they will not be denied the benefits of disability pension as per rules. If the Government can show benevolence for PBOR then why not same benefit can be given to the officers who are far less in number than PBOR.

The plea of the respondents of financial constraints is exploded. The number of PBOR who sought voluntary retirement pre 2006 would be hundred times more than that of officers. Therefore, we think that plea taken by the Government of financial constraints is nothing but an afterthought to somehow justify the administrative action. When this benefit has been extended to PBOR, we see no

reason why it should not be released to the officer. More so, the justification of financial constraints pleaded by the respondents is exposed on account of that they have released the benefit to the PBOR which are larger number than that of officer. Therefore, in our opinion, this artificial distinction which has been sought to be made of pre and post 01.01.2006 is without any rational basis. It is only a ploy to deprive the benefits of disability pension to the officers' rank".

9. The Principal Bench then struck down the clause 3 of the Notification dated 29.9.2009 and held that it will be open to the petitioner to make the representation to the authority to seek the disability pension benefit in terms of the aforesaid circular and also directed the Government to examine the matter and pass appropriate order in accordance with law.

10. We have bestowed our anxious consideration to the facts of the present case qua the judgment of the Principal Bench and we have no reason to express opinion different from the opinion of the Principal Bench, regard being had to the fact that Clause 3 of the Notification dated 29.9.2009 has been struck down being violative of Article 14 of the Constitution of India.

11. Reverting to the facts of the case, it would transpire that the applicant retired voluntarily on 20.03.1985. The policy for disability pension to those who retired after 01.01.2006 was issued by means of circular dated 29.09.2009 with retrospective effect i.e. 01.01.2006. The Applicant instituted the Original Application on 30.11.2010. By this reckoning, the applicant is entitled to relief on this count with effect from 01.01.2006.

12. In the above conspectus and regard being had to settled position of law, we converge to the considered view that the Applicant is entitled to get disability element of disability pension for 30% disability with effect from 01.01.2006. The disability that was assessed at 30% for two years would stand rounded off to 50% in terms of PCDA (P) Circular No 429 dated 4.03.2009 and also considering the decision of the Apex Court **in Sukhvinder Singh vs Union of India and Ors reported in 2014 STPL (WEB) 468 SC.**

13. In view of the above, we are of the considered view that the impugned orders passed by the Respondents were not only unjust, illegal but also not in conformity with rules, regulations and law. The impugned orders passed by the Respondents dated 10.9.1986, and 11.03.2010 (Annexures Nos. 3 and 6) deserve to be set aside and the Applicant is held entitled to disability pension @30% from 01.01.2006 for two years as recommended by the Medical Board.

14. In view of the law laid down by Hon'ble The Apex Court in the case of Veer Pal Singh, reported in (2013) 8 SCC 83 in which Hon'ble The Apex Court laid down that in such cases Review Medical Board be carried out to reassess the medical condition for further entitlement of disability pension, if any, we are of the view that in the interest of justice, the case of applicant be referred to the Re-Survey Medical Board for re-assessing the medical condition of the Applicant for further entitlement of disability pension, if any.

Order

15. Thus in the result, the Original Application succeeds and is allowed. The impugned orders passed by the Respondents dated 10.9.1986, and 11.03.2010 (Annexures Nos. 3 and 6), are set aside.

The Respondents are directed to grant disability pension @ 30% with effect from 01.01.2006 for two years. In the light of the decision of Hon'ble The Apex Court in **Sukhvinder Singh** (supra), the disability pension would stand rounded off to 50%. Respondents are directed to pay arrears of aforesaid disability pension alongwith interest @ 9% per annum from 01.01.2006. The Respondents are directed to refer the case to the Re-Survey Medical Board for re-assessing the medical condition of the applicant for further entitlement of disability pension, if any. The Respondents are further directed to comply with the order within three months from the date of production of a certified copy of this order.

16. No order as to costs.

(Lt Gen Gyan Bhushan)
Administrative Member

(Justice Virendra Kumar DIXIT)
Judicial Member

Date : Nov. , 2015

MH/*