

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1

O.A. No. 846 of 2022

Ex. Sep Bolarikh Singh Yadav Applicant
By Legal Practitioner for the Applicant : Shri R. Chandra, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : Shri Alok Kumar Mishra, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>19.01.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Maj. Gen. Sanjay Singh, Member (A)</u></p> <p>Heard Shri R. Chandra, Ld. Counsel for the applicant and Shri Alok Kumar Mishra, Ld. Counsel for the respondents.</p> <p>This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-</p> <p>“(I) Hon'ble Tribunal may be pleased to set aside the impugned order dated 12/02/2021 (Annexure No. A-1).</p> <p>(II) Hon'ble Tribunal may be pleased to direct the respondents to grant disability pension with effect from 01/07/2020 with the interest at the rate of 18% per annum.</p> <p>(III) Hon'ble Tribunal may be pleased further to grant benefit of rounding of disability pension in terms of Ram Avtar's case.</p> <p>(IV) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.”</p> <p>Submission of learned counsel for the applicant is that applicant was re-enrolled in the Defence Security Corps (DSC) on 15.11.2014. At the time of enrolment in the DSC, applicant was medically and physically fit in all respects. On 31.07.2020 applicant was discharged from service before completion of his terms and condition in low medical category due to disability “AXIAL SPONDYLOARTHRITIS” which was assessed @ 20% for life and considered as aggravated by military service. At the time of discharge, applicant was paid Rs. 3,08,880/- on account of service gratuity and retirement gratuity.</p> <p>His further submission is that on 12.02.2021, respondent No. 3 intimated that disability pension claim of the applicant has been returned by PCDA vide letter dated 01.10.2020 stating that “<i>During the scrutiny of claims received from</i></p>

your Records, it is found that the individuals (Annexure-A List attached) were permanent LMC and no sheltered appoint is available. These individuals are entitled to disability/invalid pension as per rule. Being aware of this fact, your office has paid service gratuity and retirement gratuity to the individual, which is not as demand in LPC-cum-data sheet. The amount of service gratuity and retirement gratuity that has already been paid needs to recover from the amount of DCRG payable but this is not possible to recover paid amount from amount of DCRG which is very very less than amount of service gratuity & retirement gratuity. In view of above, claim should be submitted to this office after getting deposited the paid amount by individual through MRO. Therefore, the claim received under above referred letter is returned herewith unactioned for necessary action at your end. The claim may again be submitted after clearance of demand.”

Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Apex Court in the case of **Dharamvir Singh vs. UOI & Ors**, 2013 AIR SCW 4236 and **Sikhvinder Singh vs. UOI & Ors** (2014) STPL (Web) 468 SC and pleaded that applicant is entitled for disability pension from the date of discharge from service duly rounded off to 50% for life.

Submission of learned counsel for the respondents is that applicant was re-enrolled into DSC on 15.11.2014. The applicant was placed in low medical category P2 (Permanent) w.e.f. 20.09.2016 due to diagnosis “AXIAL SPONDYLOARTHRITIS”. The RMB assessed his disability @ 20% for life as aggravated by military service. The applicant was discharged from service w.e.f. 31.07.2020 and was paid Service Gratuity, Rs. 2,05,920/- and Death-cum-Retirement Gratuity, Rs. 1,02,960/-. Disability pension claim of the applicant was processed but it was returned by the PCDA (P) Allahabad stating that applicant has already been paid the amount of Service Gratuity and Retirement Gratuity, Rs. 3,08,880/- at the time of Final Settlement of Account which needs to be recovered from amount of DCRG. Recovery of amount is not possible as the amount of DCRG is less than the amount of Service Gratuity & Retirement Gratuity already paid to the applicant. Therefore, applicant has been advised to deposit Rs. 3,08,880/- through MRO in favour of CDA Chennai and forward a copy of MRO to PCDA (P) Allahabad alongwith applicant's disability pension claim. Thereafter, DSC Records sent a consent letter to the applicant and advised him to sign in order to settle his long pending claim for grant of disability pension vide DSC Records letter dated 03.02.2022 but no consent duly signed by the applicant has been received back by the respondents so far and his case is kept pending for want of documents.

During the course of hearing, Shri Rajeev Tiwari, AO, PCDA (P) Prayagraj who is present in the Court, clarified that an amount of Rs. 1,02,960/- paid to the applicant on account of DCRG, is entitled to him and need not to be

recovered. However, Service Gratuity, Rs. 2,05,920/-, paid to the applicant is recoverable in order to release disability element to the applicant.

We find that applicant was discharged from service by holding RMB and his disability has been assessed @ 20% for life which was considered as aggravated by military service. Hence, applicant is entitled to disability element @ 20% for life duly rounded off to 50% for life in terms of the decision of the Hon'ble Supreme Court in ***Union of India and others v. Ram Avtar*** (Civil Appeal No 418 of 2012 decided on 10.12.2014).

Since, the applicant has already been paid Service Gratuity of Rs. 2,05,920/- and Death-cum-Retirement Gratuity of Rs. 1,02,960/- at the time of discharge from DSC service and applicant was asked to deposit complete amount of Rs. 3,08,880/- back to department/CDA in order to pass his claim of disability pension, it is emerged from the statement of Shri Rajeev Tiwari, AO, PCDA (P) Prayagraj that applicant need not to deposit amount of DCRG, Rs. 1,02,960/- back to department, hence, Rs. 2,05,920/- is to be returned by the applicant or adjusted from the amount of disability element which is to be paid to him @ 50% for life from the next date of discharge from service, i.e. w.e.f. 01.08.2020.

In view of aforesaid discussion/submission, we are of the opinion that respondents should grant disability element to the applicant @ 50% for life from the next date of discharge from service and adjust amount of Service Gratuity of Rs. 2,05,920/- from the arrears of amount of disability element which is payable to the applicant @ 50% for life w.e.f. 01.08.2020.

Resultantly, Original Application is allowed. The respondents are directed to grant disability element to the applicant @ 50% for life from the next date of discharge from service and adjust amount of Service Gratuity, amounting to Rs. 2,05,920/- from the arrears of amount of disability element to be paid to the applicant @ 50% for life w.e.f. 01.08.2020. The respondents are further directed to give effect to this order within four months from the date of receipt of a copy of this order.

No order as to costs.

Pending Misc. Application(s), if any, shall be treated to have been disposed off.

Let a copy of this order be provided to learned counsel for the parties for compliance.

(Maj. Gen. Sanjay Singh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)