

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Reserved
(CB, Nainital)

Original Application No. 10 of 2013Tuesday the 24th day of February, 2015

“Hon’ble Mr. Justice Abdul Mateen, Member (J)
Hon’ble Lt. Gen. A.M. Verma, Member (A)”

SL-2357P Lt Col(Retd) KP Datta, S/O Shri Faquir Chand Datta, R/O –
1024, Indira Nagar, Dehradun (Uttarakhand)

..... Applicant

By Brig Anil Srivastava (Retd), counsel for the applicant.

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi – 110 011.
2. The Chief of the Army Staff, Integrated Headquarter of Defence (Army), DHQ PO, New Delhi – 110 011.
3. PCDA (P), Draupadi Ghat, Allahabad

..... Respondents.

By Shri D.S. Tiwari, counsel for the respondents, along with
Lt. R.D. Sneha, Departmental Representative.

ORDER

1. This Original Application has been filed by the applicant seeking the following reliefs :-

“(a) to grant the benefit of rounding of the disability percentage 30% to 50% w.e.f. 01.11.2001.

(b) *To the Respondents to pay an interest @ 12% per annum of the arrears.*

(c) *That the Applicant be awarded cost of the litigation of Rs. 20000/-.*

(d) *To pass such other or further order(s)/direction (s) as Deemed fit in the facts and circumstances of the present case.”*

2. Brief facts of the case are that the petitioner was commissioned as a Special List Officer on 25.7.1977. He was injured in his lower spine during the 1971 Indo-Pak War. Later on, on 17.7.1998, when serving with 327 Field Regiment, he sustained fracture of ‘Coccyx’ bone at the same place as earlier injury and was downgraded to SHA-2PE(P) with 30% disability for life attributable to military service. He retired from service on 31.10.2001. He was in receipt of disability pension of 30% till October 2011. This was stopped with effect from November 2011. The petitioner’s request for broad banding to 50% too has not been responded.

3. The petitioner’s case, as pleaded by his learned counsel, Brig Anil Srivastava, is that he has been writing to PCDA (P) for rounding off the disability to 50% under the Govt. of India policy letter dated 30.01.2001 but to no avail. Para 7.2 of the above mentioned letter provides for rounding off disability to 50%. Learned counsel for the applicant cited the case of **Lt Gen Vijay Oberoi Vs. U.O.I. & others** (O.A. No. 329 of 2010) decided on 4.8.2010 by the Regional Bench of AFT, Chandigarh.

4. The respondents represented by D.S. Tiwari and Lt R.D. Sneha, Departmental Representative, argued that Para 7.2 of the quoted Govt. of

India letter provides for broad banding of disability to personnel who are invalided out of service. Since the petitioner retired from service, this provision of broad banding is not applicable to him.

5. Heard both sides and scrutinized the documents.

6. Para 7.2 of Govt. of India, M.O.D., letter No 1(2)/97/D (Pen-C) dated 31.01.2001 reads:

“7.2:- Where an Armed Forces Personnel is invalided out under the circumstances mentioned in Para 4.1 above, the extent of disability of functional incapacity shall be determined in the following manner for the purpose of computing the disability element:

<i>S.r no.</i>	<i>Percentage of disability as assessed by Invaliding Medical Board</i>	<i>Percentage to be reckoned computing of disability element</i>
<i>1</i>	<i>Less than 50%</i>	<i>50%</i>
<i>2</i>	<i>Between 50% top 75%</i>	<i>75%</i>
<i>3</i>	<i>Between 76% to 100</i>	<i>100%</i>

7. PPO No 003924/2001 in respect of Major K.P. Datta, annexed as A-3 by the petitioner, stated that the disability of 30% is attributable to military service for life and was accordingly granted disability pension.

8. The case of O.A. No. 329 of 2010, Lt Gen Vijay Oberoi Vs. U.O.I. and four other similar cases was decided on 04.08.2010 by the Chandigarh Bench of the A.F.T. The relevant part of the Judgment is:

“In the result, the petitions are allowed, the words, “provisions contained in Para 7.2 above shall not be applicable for computing disability element. Disability actually assessed by the duly approved Release Medical Board/Invaliding Medical Board, as accepted by the Pension Sanctioning Authority, shall reckon for computing disability element” appearing in Para 8.2 of the letter

dated 31.01.2001 are struck down. Consequently, it is held that the persons including the petitioners, being discharged on attaining the age of superannuation, or on completion of tenure, or being retired etc. if found to be suffering from disability to the extent of 20% or above, and being attributable to or aggravated by military service, would be entitled to the benefit of rounding off/broad banding, at par with the persons, who are prematurely invalided out.”

9. The above judgment clearly states that the retired personnel would be entitled to the benefit of rounding off/broad banding at par with the persons who are invalided out. Accordingly, the petitioner in the instant case is entitled to broad banding.

10. In view of above, the Original Application is partly allowed. The respondents are directed to grant the petitioner the benefit of rounding off the disability pension upto 50% with effect from 01.11.2001. The respondents will pay an interest @ 12% per annum on the arrears. No order as to costs. The respondents are directed to implement this order within a period of three months from today.

(Lt. Gen. A.M. Verma)
Member (A)

(Justice Abdul Mateen)
Member (J)

PG.