

pRESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 275 of 2014

Friday, this the 27th day of April, 2018

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

**Darshan Kumar Sharma (No. 82787 Ex Tel- I), son of
Shri Gurudas Sharma, resident of village Singhariya,
Ashoka Gas Godam Road, Kunraghat, district Gorakhpur
(Uttar Pradesh). Applicant**

Ld. Counsel for the : **Shri Yash Pal Singh,**
Applicant **Advocate.**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Officer-in- charge, Records, Bureau of Sailors, Cheetah Camp, Mankhurd, Mumbai – 400088.
3. Logistics Officer – in- charge, Naval Pension Office, C/O INS Tanaji, Sion Trombay Road, Mankhurd, Mumbai – 400088.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, G (3), Allahabad (Uttar Pradesh)– 273008.
5. Defence Pension Disbursing Officer, Office of the DPDO, G.R.D. Complex, Kunraghat, Gorakhpur – 273001.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**
Respondents. **Advocat, Sr. Central Govt. Standing**
Counsel **Counsel assisted by Maj Salen**
Xaxa, OIC Legal Cell.

ORDER**“Per Hon’ble Air Marshal BBP 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) Issuing/passing of an order or direction to the Respondents setting aside the order/letter dated 07.11.2014 issued by the Senior Accounts Officer (Pension) in the office of Principal Controller of Defence Accounts (Pension) in the office of Principal Controller of Defence Accounts (Pension) Allahabad holding the applicant not entitled for service element of disability pension (Annexure No.1 to the Original Application), after summoning the relevant original records.

“(b) Issuing/passing of any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

“(c) allowing this Application with cost.”

2. The facts in nutshell are that the applicant was enrolled in the Indian Navy on 24.04.1964 and was discharged on 23.04.1974 on completion of tenure of engagement. At the time, the applicant was discharged from service he was in low medical category for the disability termed as CHRONIC SUPER OTITUS MEDIA i.e. CSOM Lt EAR. The Release Medical Board which examined the applicant opined the disability as neither attributable to nor aggravated by military service. The Release Medical Board assessed the disability of the applicant initially as

20%. The Applicant was subsequently examined by successive Reassessment Medical Board (RSMB) which favourably assessed his disability as 20% for life. On account of favourable assessment of the disability by RSMB, the applicant was granted disability element of disability pension w.e.f 24.04.1974 which continued till 12.03.2004. However, the applicant was denied service element of disability pension on the ground that he had not completed 15 years mandatory service. It is stated that based on the recommendation of Reassessment Medical Board, the applicant was granted disability pension including the disability element for the period from 24.04.1974 to 30.01.1976 and service element for life vide communication dated 10.03.1983. However, after efflux of 30 years of discharge, objection was raised about entitlement of disability pension to the applicant vide communication dated 17.03.2004 and the payment of disability pension was stopped on the ground that the applicant had received service gratuity and DCRG at the time of discharge and as such he was not entitled for disability pension. In response to the objection, the applicant preferred an application dated 05.05.2004. Vide communication dated 10.03.2005, the Controller of Defence Accounts (Pension Disbursement) Meerut Cantt informed the DPDO Gurdaspur that the applicant was entitled to get disability pension. Vide communication dated 21.03.2005, the Controller of Defence Accounts Meerut Cantt also informed the applicant

that the arrears of service element of the applicant has been paid in the month of April 2005 alongwith pension after adjusting the service gratuity. On 04.06.2014, the applicant preferred an application addressed to officer Incharge Records, Bureau of Sailors, Cheetah Camp Mankhurd Mumbai with the request to enhance disability pension by giving benefit of rounding off in terms of the Ministry of Defence letter dated 19.01.2010. In reply, vide communication dated 05.09.2014, the Applicant was informed that he was not entitled to the benefit of rounding off. By the same letter, the applicant was also informed that the applicant had been inadvertently sanctioned service element of disability pension and the same has been cancelled. Aggrieved, the applicant preferred an application dated 22.09.2014 addressed to various authorities submitting therein that the applicant had been drawing disability pension for the last forty years and that the service gratuity received by him at the time of discharge from the Naval service has been recovered by the DPDO Gurdaspur. In reply vide communication dated 07.11.2014, the Senior Accounts Officer (Pension) of the PCDA (P) Allahabad informed that as per the pension Regulation, the applicant was not entitled for service element of disability pension. It is in this perspective that the applicant has preferred the present O.A.

3. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also gone through the materials on record.

4. From the reliefs claimed herein, it would transpire that the only grievance of the applicant revolves round denial of service element of disability pension. Hence we confine ourselves to the discussions on the point whether the applicant is entitled to service element of disability pension or not.

5. The only ground urged in the counter affidavit by the respondents to deny service pension is that the applicant had not been invalidated out from service and that he had not completed the mandatory service of 15 years to earn service pension. In this connection Regulation 78 of the Navy (Pension) Regulation 1964 has been referred.

6. In connection with the above contentions, we would like to refer to Navy Regulation 107 which being relevant is quoted below.

"107. Amount of disability pension.- In cases where the accepted degree of disablement is twenty per cent, or over, the monthly rates of disability pension consisting of service and disability elements, shall be as follows, namely-

1. Service element

<i>(a) Where the individual has rendered sufficient service to qualify for a service pension</i>	<i>Service pension admissible in accordance with his rank and group last held, and length of</i>
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	<i>service.</i>
<i>(b) Where the individual has not rendered sufficient service to qualify for service pension</i>	<p><i>(i) If the disability was sustained while on flying or parachute jumping duty in an aircraft or while being carried on duty in an aircraft under proper authority, the minimum service pension appropriate to his rank and group</i></p> <p><i>(ii) In all other cases, that proportion of the minimum service pension appropriate to the individual's rank and group which the number of his completed years of qualifying service bears to fifteen but in no case less than two-thirds of the minimum service pension.</i></p>

Provided that for the purpose of this clause, service rendered before the age of seventeen years shall be treated as qualifying service.

Explanation:- The service element shall be assessed-

- (i) In the case of ordinary seaman or equivalent, on the basis of the minimum service pension laid down for able seaman or equivalent of the same group.*
- (ii) In the case of Artificers V class on the basis of minimum service pension laid down for Leading Seaman or equivalent in Group B.*
- (iii) In the case of Artificer acting IV class, on the basis of the minimum service pension laid down for Group A."*

7. Thus it clearly emerges from the Regulation aforesaid that disability pension consists of service element and disability element. Therefore, when an individual is granted disability pension, he is to be granted both service and disability elements. There is no minimum service prescribed for grant of disability pension. Length of service is looked into only on the aspect of deciding the quantum of payment under service element. If a person has rendered sufficient service to earn a service pension, the pension admissible under the Regulation based on his rank and length of service becomes the service element. If an individual does not have sufficient qualifying service for regular pension, there is a proportionate reduction which in no case can be less than two-third of the minimum service pension. Further, for disability sustained "in other cases" (not during flying or parachute jumping), the minimum service pension, proportionate to his rank & years of service is to be sanctioned as service element which in no case can be less than two-thirds of minimum service pension.

8. Regulation 78 (as cited by the learned counsel for the respondents) deals with minimum qualifying service for pension. This regulation nor any of the other Regulations provides for any restriction on payment of service element, in addition to disability element as a part of disability pension. In the instant case, the applicant has been sanctioned disability pension. It may be noted that the Pension Regulation as a

whole nowhere provide for the grant of only the disability element of the disability pension. The respondents have not been able to show us any Regulation/Rule/Policy by which only the disability element could be paid.

9. At this stage, we would like to point out that the respondents had sanctioned disability pension to the applicant and the award of it has not been questioned. The Applicant has only assailed the factum that he was not granted service element of the disability pension. We have already observed above that the applicant is entitled to the service element as there are no provisions to provide only disability element of the disability pension.

10. On the question of rounding off of the disability pension, we are not in agreement with the respondents' stand that the applicant was not entitled to the same as he was a 'pre 01.01.1996' discharge and that he was not discharged from service solely on medical grounds. The aspect of enhanced benefits announced by the Government becoming available to those personnel who retired before the date of promulgation was considered by the Hon'ble Apex Court in the case of **KJS Buttar vs. Union of Indian & Anr, (2011) 11 SCC 429**. In that case, the appellant was denied enhanced benefits on the basis of the fact that he had retired before 01.01.1996 and such benefits were granted only to those who retired on or after 01.01.1996. The Hon'ble Apex Court held as follows:

"8. In our opinion, the restriction of the benefit to only officers who were invalided out of service after 1-1.1996 is violative of Article 14 of the Constitution and is hence illegal. We are fortified by the view as taken by the decision of this Court in *Union of India v. Deoki Nandan Aggarwal*, 1992 Supp (1) SCC 323 where it was held that the benefit of amending Act 38 of 1986 cannot be restricted only to those High Court Judges who retired after 1986. 9. In *State of Punjab v. Justice S.S.Dewan*, (1997) 4 SCC 569 it was held that if it is a liberalisation of an existing scheme all pensioners are to be treated equally, but if it is introduction of a new retiral benefit, its benefit will not be available to those who stood retired prior to its introduction. In our opinion the Letter of the Ministry of Defence dated 31-1-2001 is only liberalisation of an existing scheme."

11. The Apex Court in **Civil Appeal No.418 of 2012 and connected cases (Union of India & Ors. vs. Ram Avtar)** decided on December 10, 2014, had once again examined the aspect of benefit of rounding off of the disability pension and whether it is to be given only to those personnel who were invalided out of service and not to any other category. The Apex Court had ruled that such a relief is to be given to all those who are getting or are entitled to disability pension. Therefore, in our view, the applicant is entitled to the benefit of rounding off of the disability element to 50%.

12. Accordingly the Original Application is allowed and it is held that the applicant is entitled to disability pension in totality consisting of service element and the disability element and the benefit of rounding off. The respondents are directed to calculate and provide the service element of the disability pension to the applicant from the date the service element of

pension was last stopped in 2014. Additionally, the benefit of rounding off of the disability element to the applicant from 20% to 50% is to be extended to him from 01.01.1996. The amount due over such benefits alongwith arrears should be paid within a period of four months from the date of receipt of a copy of this order, failing which the unpaid amount will carry a simple interest at the rate of 8% per annum.

13. No order as to costs.

(Air Marshal BBP Sinha) (Justice S.V.S. Rathore)
Member (A) Member (J)

Dated: April, 27 ,2018
MH/-