

RESERVED
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 301 of 2017

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)”

No. 14580093K Ex. Nk. Parasuram, Son of Late Duryodhan Ram, Resident of village - Jaunpur, P.O.- Dihawan, Tehsil - Rasra, District - Ballia – 221711 U.P.

..... Applicant

Ld. Counsel for the : **Shri V.P. Pandey, Advocate.**
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi - 110011.
2. The Chief of Army Staff, Integrated Head Quarter, Ministry of Defence, (Army) South Block, New Delhi 110011.
3. Officer Incharge, EME Records, PIN – 900453 C/o 56 APO
4. Principal Controller of Defence Account (P), Draupadi Ghat, Allahabad – 211014.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal,**
Respondents. **Advocate**
Senior Central Govt 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.

“(i) Issue/pass an order or direction directing the respondents to grant disability pension to the applicant w.e.f. 1.1.2006 in view of Government of India letter dated 29th Sept. 2009.

(ii) Issue/pass an order or direction directing the respondents to round off the disability pension from 20% to 50%.

(iii) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.

(iv) Cost of the appeal be awarded to the applicant.”

2. The facts of the case shorn of unnecessary details are that the applicant was enrolled in the Indian Army on 15.03.1985 and was discharged from service w.e.f. 30 .06.2001 (AN) on his own request on compassionate ground. Before discharge, the applicant being in low medical category, was brought before the Release Medical Board which found him suffering from ‘OSTEOARTHRITIS BOTH KNEE” and opined it to be aggravated by military service. The disability of the applicant was assessed as 20% for two years. It may be noted that in the year 2016, the applicant had filed O.A No nil of 2016 for grant of service pension in the rank of Naik which culminated in being allowed vide order of the Tribunal dated 10.08.2016. Now the Applicant has filed the present O.A for the relief of disability pension with attending prayer of rounding off of disability from 20% to 50% for two years.

3. We have heard learned counsel for the parties and also perused the material facts on record.

4. Learned counsel for the Applicant submitted that since disability of the applicant has been found to be aggravated by

military service, he is entitled to disability pension. He further refers to Govt of India letter dated 29.09.2009 in terms of which it is submitted, the Applicant is entitled to disability pension and denial of the same on the ground of earlier policy before 2006 is illegal and against the provisions of the Govt of India letter dated 29th Sept 2009. The learned counsel also referred to the decision of the Principal Bench whereby the issue stood settled and makes the applicant entitled to disability pension.

5. Per contra, learned counsel for the respondents contends that since the applicant was discharged on his own request before fulfilling the conditions of the enrolment under item III (iv) of Table Annexed to Rule 13 (3) of the Army Rules 1954, he was not entitled to disability pension.

6. In the instant case, a preliminary issue was raised that the applicant has knocked the door of this tribunal after efflux of 16 years, the claim for disability pension has become dead or stale and he cannot be permitted to revive the claim after inordinate delay. In this connection, he has referred to various decisions of the Apex Court. Suffice it to say that this Tribunal vide order dated 10.08.2017 condoned the delay holding that the claim of the applicant involves recurring cause of action and in view of the settled position in law, the delay is condoned. Hence the preliminary objection raised in the counter affidavit stands foreclosed.

7. The learned counsel for the applicant in support of the argument, has referred 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/discharged on or after 01.01.2006 irrespective of the fact that they sought voluntary retirement were allowed.

8. 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.”

9. The Principal Bench after due consideration, has thereafter 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. In order to understand the involved issue in its entirety it is desirable to reproduce the Govt Notification dated 29.09.2009 as under:-

*“No 16 (5)/2008/D (Pen/Policy)
Government of Indi
Ministry of Defence
Dept. of Ex-Servicemen
Welfare
New Delhi, 29th Sept. 2009*

To

*The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff*

Subject : Implementation of Government decision on the recommendation of the Sixth Central Pay Commission-Revision of provisions regulating Pensionary Awards relating to disability pension/war injury pension etc. For the Armed Forces Offices and personnel Below Officer Rank (PBOR) on voluntary retirement/discharge on own request on or after 1.1.2006.

Sir,

1. *The undersigned is directed to refer to Note below Para 8 and para 11 of the Ministry's letter No 1 (2)/97/D (Pen-C) dated 31.1.2011, wherein it has been provided that Armed Forces personnel who retire voluntarily or seek discharge on request shall not be eligible for any award on account of disability.*

2. *In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide para 5.1.1969 of their report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone sump-sum compensation in lieu of that disability, maybe given disability element/war injury element at the time of their retirement/discharge whether voluntary or otherwise in addition to retiring/service pension or retiring/service gratuity.*

3. *The provisions of this letter shall apply to the Armed Forces personnel who are retired/discharged from service on or after 1.1.2006.*

4. *Pension Regulations for the three services will be amended in due course.*

5. *This issue with the concurrence of Ministry of Defence (fin) vide their U.O. No. 3545/(Fin/Pen) dated 29.09.2009.*

6. *Hindi version will follow.*

Yours faithfully,

(Harbans Singh)

Director/Pen/Policy

Copy to:-

As per standard list"

11. As can be observed striking down of Para 3 of above letter opens the doors for eligibility to disability element of pension for all voluntary/pre-mature retirees who retired prior to 01.01.2006. There is a further observation of the Principal Bench referring to the Notification dated 03.08.2010, granting disability pension to pre 01.01.2006 PBOR retirees being relevant in law is 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".

12. In the light of the above judicial observations 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 29.09.2009 has been struck down being violative of Article 14 of the Constitution of India.

13. Reverting to the facts of the case, it would transpire that the applicant retired voluntarily on 30.06.2001. The policy for disability pension to those who volunteered to opt for pre-mature retirement 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.

14. 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 20%

disability with effect from 01.01.2006. The disability that was assessed at 20% for two years would stand rounded off to 50% in terms of PCDA (P) Circular No 429 dated 4.03.2009. The rounding off of disability from 20% to 50% is also based on the settled position of law on this matter as per the Hon'ble Apex Court decision in ***Sukhvinder Singh vs Union of India & Ors*** reported in 2014 STPL (WEB) 468 SC and In ***Union of India and Ors v Ram Avtar & ors Civil Appeal No 418 of 2012*** dated 10th December 2014.

15. 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, we are of the view that in the interest of justice, the case of applicant be referred to the Re-Survey Medical Board and further entitlement of disability element of pension will be as per the outcome of Re-Survey Medical Board.

Order

16. Thus in the result, the Original Application succeeds and is **allowed**. The applicant is prima facie eligible for disability pension and is also eligible for rounding off of disability subject to the outcome of proposed RSMB. The Respondents are directed to refer the case to the Re-Survey Medical Board for re-assessing the medical condition of the applicant. Further entitlement of disability pension shall be subject to outcome of Re-Survey Medical Board.

The respondents are further directed to comply with the order within four months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest @ 9% per annum to the applicant on the amount accrued till the date of actual payment.

17. No order as to costs.

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

Dated: Apr , 27 , 2018
MH/-