

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****O.A. No. 282 of 2016**Thursday, the 24th day of May, 2018**Hon'ble Mr. Justice SVS Rathore, Member (J)**
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex Gdsm Varun Kumar Pandey (13688551H) son of late Sri Ram Achal Pandey, R/o Village Nagwasi, Post Dugavli, Dist Mirzapur.

.... Applicant

Ld. Counsel for the Applicant : **Col (Retd) A.K. Srivastava, Advocate**

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi - 110011
3. OC Records, Brigade of the Guards, Panchmari.
4. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad.

...Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal,
Advocate,****ORDER (Oral)**

1. This OA was initially decided by the Bench comprising Hon'ble Mr. Justice D.P.Singh, Member (J) and one of us (Air Marshal BBP Sinha,

Member (A). By means of this OA, the applicant has made the following prayers:-

“(a) Issue/Pass an order or direction of appropriate nature to the respondents to grant and sanction War Injury Element and treat the applicant as a Battle Casualty w.e.f. his date of Discharge from service 05 Dec 1992 in terms of Para 10 of MoD dated 31 Jan 2001 duly supported by decisions of Apex Court after quashing its denial/rejection vide Records Brigade of The Guards Letter dated 02 Aug 2016 and 26 Aug 2016 (Annexure No. A-2 and A-3) including MoD Letter Dated 23 Dec 2014 referred therein.

(b) Issue/Pass an order or direction of appropriate nature to the respondents to carry out the “rounding- off” of his 20% disability pension to 50% in respect of the applicant w.e.f. 01 Jan 1996 as provided vide Government of India, Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 31 Jan 2001 supported by the position held by the Supreme Court after quashing its denial / rejection vide records Brigade of The Guards Letter dated 02 Aug 2016 and 26 Aug 2016 (Annexure No. A-2 and A-3) including MoD Letter Dated 23 Dec 2014 referred therein.

(c) Issue/Pass any other order or direction to issue a fresh PPO or Corrigendum PPO granting disability Pension including its constituent of Disability Element and Service Element w.e.f. 05 Dec 1992, rounding off disability pension to 50 w.e.f. 01 Jan 1996 and War Injury Element and Battle Casualty Pension w.e.f. 05 Dec 1992.

(d) Issue/Pass an order or direction to the respondent to pay interest @ 18% for dues which have not been paid for intervening period from 05 Dec 1994 to 20 Apr 2012.

(e) Issue/Pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(f) Allow this application with costs."

2. In brief, the facts of the case, as averred in the OA, are that the applicant was enrolled in the Brigade of Guards Regiment on 17.10.1986. On 01.01.1990, he sustained backbone injury being crushed by a sliding iceberg while he and some other army personnel were performing duties during 'operation MEGH DOOT', a fierce fighting with Pakistan in Siachin Glacier. On 26.03.1991 the applicant applied for voluntary discharge, but no action was taken by the concerned authorities for a substantial period. However, the applicant was discharged from service with 20% disability on 05.12.1992 for LOW BACKACHE, aggravated by military service, to be re-assessed after two years. However, the applicant was not granted disability pension on the ground that he was discharged voluntarily and was not invalided out of service. Feeling aggrieved, the applicant preferred a writ petition before the Hon'ble Allahabad High Court, which was transferred to this Tribunal and was registered as TA No. 1221 of 2010. The said TA was decided on 12.12.2011, whereby the disability pension was granted to the applicant till the Release Medical Board and thereafter the disability pension was subject to the outcome of Re-Survey

Medical Board, which was conducted on 20.04.2012. Thereafter the applicant has preferred the instant OA, for grant of rounding off of disability pension and also for War Injury Pension.

3. Since there was difference of opinion between the Hon'ble Members on the point of payment of War Injury Pension to the applicant and also on the points of awarding costs against the respondents and issuing notice under Section 19 of the Armed Forces Tribunal Act, 2007 to Col Rajbir Yadav of 11 GRRC, who has filed the counter affidavit on behalf of the respondents, to show cause as to why he may not be tried and punished for committing contempt of the Tribunal, the matter was referred to Hon'ble the Chairperson, Armed Forces Tribunal, Principal Bench, New Delhi for orders in pursuance of provisions of Section 28 of the Armed Forces Tribunal Act, 2007. In the referral order, the points for consideration by the third member were framed. The Hon'ble Chairperson, Armed Forces Tribunal, Principal Bench, New Delhi vide his order dated 13.02.2018 entrusted this matter to one of us (Justice SVS Rathore) as Third Member for consideration and decision on the points referred. The Third Member has expressed his opinion vide order dated 22.05.2018. In short, the said opinion is as under:

4. **Point No. 1**

The first point was a legal point. Law is settled on the point that a decision of a co-ordinate Bench is binding. (vide **AIR 2000 SC 594, S./**

Rooplal and another vs Lt Governor through Chief Secretary, Delhi and others.

5. **Points No. 2 and 4**

On Points No. 2 and 4, it has been held by the Third Member that the applicant is not entitled to War Injury Pension as he has utterly failed to establish that he had sustained any injury while he was posted at Siachin Glacier.

6. **Point No. 3:**

The Third Member has further held that the facts mentioned by the respondents in their counter affidavit find full support from the report of Release Medical Board. It is nowhere the case of the applicant that any observation or finding given by the Release Medical Board in its report was false or incorrect. On the contrary, on the basis of same report of Release Medical Board, the applicant had approached the High Court for the relief of disability pension by filing a writ petition, which was transferred to this Tribunal wherein he was granted the said relief. Hence the applicant cannot challenge the correctness of the report of Release Medical Board now. It is relevant to mention that Part-I of the report deals with the personal statement of the applicant himself. This Part-I has been signed by the applicant on 16.10.1992, which indicates that for the first time his lower back ache started on 08.10.1991 and he was treated for the same from 08.10.1991 to 14.11.1991 and thereafter further from 06.06.1992 to 09.06.1992. Thus, from the own statement of the

applicant, which forms part of the Release Medical Board and was also signed by the applicant himself, it is clear that his lower back ache started for the first time on 08.10.1991 while as per his own pleadings he suffered the alleged injury on 01.01.1990. There is absolutely no medical document or report about the applicant sustaining any injury or treatment during the period 01.01.1990 to 08.10.1991 i.e. about one year and nine months, prior to his Release Medical Board. How the applicant is claiming that this lower back ache was the result of injury, if any, sustained by him while he was coming back from Siachin Glacier to Siachin Base Camp on 01.01.1990, is not understandable. Strangely, this report of Release Medical Board is the only medical evidence on which the applicant himself is relying, but it does not support his case; rather it negates his claim. The pleadings in the counter affidavit are very specific on the point and we find no concealment of facts in the counter affidavit filed by Col Rajbir Yadav of 11 GRRC, hence keeping in view the discussion made above, the order passed by Hon'ble Member (J) for issuing notice to Col Rajbir Yadav of 11 GRRC under Section 19 of the Armed Forces Tribunal Act, 2007 for his trial and punishment for committing contempt of the Tribunal is not justifiable. In this view of the matter, they are also not liable to pay costs as imposed by Hon'ble Member (J).

7. At this stage, we would like to quote Section 28 of the Armed Forces Tribunal Act, 2007, which reads as under:

*“28. **Decision to be by majority.** —If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Tribunal who have heard the case, including those who first heard it.*

8. Since the law is settled on the point that if the Members of a Bench differ in opinion on any point, the view expressed by two Hon’ble Members does not come within the purview of “order” and is only their opinion. In such a situation, the law requires that the case be decided in view of the majority opinion. Keeping in view the opinion expressed by the Third Hon’ble Member, the applicant is not entitled to War Injury Pension.

9. In view of above, this case is decided in view of the majority opinion. Accordingly, the operative portion of the order shall read as under:

In the result, the **O.A is partly allowed**. The impugned orders rejecting the claim for disability pension and its rounding off are set aside. The applicant shall be entitled to disability pension with disability element as well as service element. The disability element at the rate of 20% for life which on being rounded off shall come to 50% for life from the date of Re-survey Medical Board i.e. 20.04.2012.

Prayer of the applicant for grant of War Injury Pension is hereby rejected.

The respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order. The office is directed to provide a copy of this order to the respondents within three days for onward transmission and compliance.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: May 24, 2018
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