

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 04 of 2017**

Tuesday, this the 02nd day of January, 2018

**“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal BBP, Sinha, Member (A)”**

**Service No. 775141-R Ex-Cpl Jeevan Chandra Pandey, son of
Shri Bhawani Dutt, resident of C/o Saraswati Niwas, B-4 Adarsh
Nagar, Kalyanpur, Post Office – Vikas Nagar, Lucknow,
Pin code - 226022 Applicant**

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi - 110011
2. Chief of the Air Staff, Integrated HQ of Ministry of Defence (Air) Vayu Bhawan, New Delhi - 110011.
3. Officer-in- Charge Pension and welfare Wing, Air Force Record Office, Subroto Park, New Delhi – 110100.
4. Joint Controller of Defence Accounts (Air Force), Subroto Park New Delhi - 110100.
5. Directorate of Air Veterans, Air Headquarters, AFRO Building, Subroto Park, New Delhi - 110010.
6. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.) - 211014.

...Respondents

Ld. Counsel for the Respondents: **Dr. Shailendra Sharma Atal,**
Sr. Central Govt Standing Counsel.

Assisted by : Wg Cdr Sardul Singh, OIC Legal Cell.

ORDER (ORAL)

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 primarily for the twin reliefs of granting disability element of pension from the date of discharge and for rounding it off from 20% to 50%. The second relief sought is for grant of service element of pension. The other two reliefs have not been pressed into service.

2. The Applicant was enrolled in the Indian Air Force on 18.03.1996 and discharged from service at his own request on 24.09.2007 after rendering 11 years and 191 days of service on being selected to a Public Sector Unit. Before discharge, he was brought before Release Medical Board on 24.09.2007 which assessed his disability as 20% for life. However, his claim for disability pension was denied. Thereafter, he preferred first appeal in which disability element was granted with effect from 23.02.2013, that is, from the date of appeal.

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

4. In the instant case although the Applicant was discharged on 24.09.2007 but he preferred first appeal after considerable delay in the year 2013. It is not in the realm of dispute that the disability element was granted to the

Applicant while deciding the first appeal. Hence, we confine ourselves to adjudicating the issue of firstly whether the Applicant is entitled to disability element of pension from the date of discharge along with the relief of rounding off of his disability from 20% to 50%. Secondly we shall also look into the issue of his entitlement to service element of pension.

5. As far as disability element of pension is concerned admittedly, the first appeal was filed after considerable delay in the year 2013 which was decided vide letter dated 06.08.2015. The O.A was filed on 06.04.2016. It would appear that being aggrieved by the grant of disability pension with effect from 23.02.2013, the Applicant preferred a representation which culminated in being rejected observing that since the first appeal was filed after considerable delay, the disability pension was made effective from the date the first appeal was preferred.

6. The Learned Counsel also called in question the payment of arrears from the date of discharge submitting that it should be restricted to three years prior to filing of the Original Application and in this connection, referred to the decision of Hon'ble the Apex Court in **Shiv Das v Union of India and Ors** reported in **(2008) 2 PLR 573**. In view of settled position in law, we have no reason to disagree with the submission of the learned counsel. In the instant case, the applicant filed the O.A on 06.04.2016. In view of

settled position in law in the case of Shiv Das (supra), the applicant shall be entitled to disability pension with effect from 06.04.2013. Thus, we do not find any reason to interfere with the order passed in the first appeal whereby the applicant was allowed payment of disability pension with effect from the date of filing of the first appeal which had been filed after considerable delay.

7. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar*** and ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. In the light of the above decision, we are of the view that the disability assessed as 20% for life shall stand rounded off to 50% for life.

8. As for as the issue of service element of pension is concerned, we have heard both sides. The basic eligibility to earn service pension is 15 years of service. However in this case the applicant has served for only 11 years and 191 days and left service at his own request to join another organization for greener pastures. Hence we are of the view that the applicant is not entitled to service element of

pension. However he shall remain entitled to disability element of pension for life.

9. In view of the above, the O.A is allowed partially. The respondents are directed to grant disability element of pension to the applicant @ 20% for life, which would stand rounded off to 50% for life. However, payment of arrears is restricted to three years prior to filing of the Original Application in view of decision of the Apex Court in **Shiv Das v Union of India and Ors** reported in **(2008) 2 PLR 573**. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 10% on the amount accrued from due date till the date of actual payment.

10. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: 02 January, 2018

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