

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 501 of 2017**Monday, this the 18th day of December, 2017**“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal BBP, Sinha, Member (A)”****DR- 10221A Lt Colonel (Retired) V. R. Srivastava Son of Late
Shri Sri Ram Ji 2/223, Vivekkhand, Gomtinagar Lucknow (UP)
PIN – 226010. Applicant****Ld. Counsel for the : Col Y.R. Sharama (Retd)
Applicant (Counsel for the applicant)****Versus**

1. Union of India, Through Secretary, Ministry of Defence
South Block, New Delhi - 110011.
2. Chief of the Army Staff, Army Headquarters, South Block, New
Delhi - 110011.
3. Adjutant General ADG (PS) AG’s Branch
IHQ of MoD (Army) Army Headquarters New Delhi - 110001.
4. Adjutant General’s Branch
Dte Gen of Medical Services (Army) IHQ of Mod (Army)
L Block, Army Headquarters
New Delhi - 110001.
6. Principal Controller of Defence Account (Pension) Draupadi
Ghat Allahabad.

...Respondents**Ld. Counsel for the: Shri A.K. Sahu, Advocate
Respondents. Addl Central Govt Standing Counsel.****Assisted by : Maj Salen Xaxa, OIC Legal Cell.**

ORDER (ORAL)

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act, for the relief of grant of disability pension attended with the relief of rounding off of disability pension.
2. The brief facts of the case are that the Applicant was commissioned in the Indian Army in Dental Corps on 30.09.1967 and was superannuated prematurely at his own request on 31.10.1992. At the time of retirement, the Applicant was brought before Release Medical Board (RMB) which found him suffering from OSTEOPOROSIS BOTH KNEE JOINTS, ANKLE AND CERVICAL SPONDYLOSIS ICD 715 AND MYOCARDIAL INFARCTION. On first count, the disability was assessed to be 11-14% and on the second count, it was assessed to be 15-19%. The composite disability was assessed as 30% for one year. The disability was opined to be aggravated by Military Service. The total service rendered by the Applicant works out to be 25 years and six months. He represented his case for grant of disability pension to Ministry of Defence which was rejected vide letter dated 08.11.1992. On 23.12.2015, the Applicant again represented his case for disability pension and for broad-banding to Adjutant General Branch but the same was rejected vide letter dated 29.01.2016 intimating that according to policy, the officers proceeding on premature

retirement at his own request were not entitled to disability pension and for broad banding. Thereafter, the Applicant preferred First Appeal which was rejected vide order dated 17.08.2016. The second appeal preferred by the Applicant was also rejected vide order dated 24.01.2017.

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. The crux of contentions advanced by learned counsel for the respondents is that as per policy in vogue as contained in the letter of MoD dated 19.05.2017, the Applicant is entitled to disability element of disability pension which has been made applicable to pre-2006 retirees with effect from 01.01.2006 but at the same time, repudiated the claim for broad-banding submitting that the Applicant does not fulfill the eligibility condition for entitlement of broad banding of disability pension as contained in the letter of Govt of India MoD dated 31.01.2001 and that the broad banding facility is extended to personnel who were invalidated out of service. Thus it is admitted that the Applicant is entitled to disability pension in terms of latest policy of the Government of India.

5. As regards the broad-banding relief sought for by the applicant, we find that the relief of broad-banding was found entitled to the personnel who retired on superannuation or completion of term of engagement by

Hon'ble Apex Court in the judgment rendered in Ram Avtar's case. The said judgment was applied by Hon'ble Apex Court in a case between UOI vs. Dayaram & others in Civil Appeal No.1835 batch case and the order of AFT Regional Bench, Chandimandir dated 03.08.2012 made in O.A.No. 1960 of 2012 between Ved Prakash vs. UOI & Ors case was upheld. In the order passed in Ved Prakash cases, the scope of the applications are described hereunder:

"The necessary facts, which are common, in all these cases are, that the petitioners, hereinafter to be referred to as the "individuals" were discharged from Army service, whether by way of retirement, superannuation, voluntary discharge, or discharged under any other provisions of the Army Rules or Army Act, and at the time of discharge, they were carrying disability, attributable to or aggravated by military service, and to the extent of not less than 20% with the difference that some of the individuals in this bunch are the persons, who were so discharged prior to 01.01.1996, and in other matters, they were discharged after 01.01.1996. These individuals claim to be entitled to the benefit of "rounding off" or "broad-banding", as introduced by the Government of India vide letter dated 31.01.2001, read with the letters issued from time to time subsequently, enlarging the scope thereof. In terms of the letter dated 31.01.2001, it applied to only those persons, who were in service as on or after 01.01.1996, and did not apply to others, which gave rise to a spate of

litigation all around, which litigation finally culminated in favour of the individuals, by concluding, that the benefit is available to all individuals, irrespective of the fact that they were in service on 01.01.1996 or not. "

6. In view of the discussion held above, we are of the considered opinion that the applicant is entitled to the disability pension with effect from 01.01.2006 as per the letter of Government of India dated 29.09.2009 conferring disability pension to the premature retirees and consequently, the applicant is also entitled for broad-banding of disability pension from the said date, i.e., the date of entitlement.

7. In view of the above, the O.A is allowed. The impugned orders denying disability pension as well as the relief of rounding off are set aside. The Applicant is Prima facie held to be entitled to disability pension with effect from 01.01.2006 and shall also be entitled to rounding off to 50% in terms of the policy as contained in letter dated 31.01.2001. Since the disability of the Applicant was assessed for one year at the time of release in the year 1992, it is directed that the Applicant shall be brought before Resurvey Medical Board (RSMB) and shall be entitled to consequential benefits subject to the opinion of the aforesaid Medical Board. The arrears of the disability

pension as well as benefit from rounding off shall also be paid to the Applicant three years prior to filing of this O.A. (Date of filing of O.A. is 11.12.2017). The Re- Survey Medical Board (RSMB) is to be completed within three months from the signing of this order. The complete order is to be implemented within four months from the date of presentation of a certified copy of this order failing which the Applicant shall be entitled to interest at the rate of 9% till the date of actual payment.

8. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: 18 December, 2017

MH/-