

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1
Reserved

Original Application No 264 of 2019

Monday, this the 5th day of April, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

EX Nk Raghuraj Singh
 S/o Shri Udayveer Singh
 Army No. 13689580-K
 Vill-Bula, Post-Barai
 District Etah, U.P.

..... Applicant

Ld. Counsel for the Applicant: **Shri Pankaj Kumar Shukla**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence (Army) South Block, New Delhi-110010.
2. The Chief of the Army Staff, IHQ MOD (Army), South Block, New Delhi – 110010.
3. The Officer in Charge, Record Officer of Records, Brigade of the Guards, Pin-9000746 C/o 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad.

..... Respondents

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

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(a) To issue/pass an order or direction to set-aside/quash the Rejection of the claim for disability element of disability pension vide order dated 23.12.2016.

(b) To issue/pass an order or direction to the respondents to Grant disability element of disability pension @ 50% from date of Notional Discharge i.e. 31.12.2009, after settlement of due drawn statement.

(c) To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the applicant.

(d) To allow this application with costs.

3. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 27.12.1987 and discharged from service after rendering more than 17 years of service on 31.05.2004 (AN). The applicant was in receipt of 50% disability element of disability pension with effect from 01.06.2004 vide corrigendum P.P.O. No. DE/Corr/25507/2009. Applicant after an apprehension that he was illegally discharged from service had filed O.A. No. 32 of 2015 with a prayer to be re-instated in service. The aforesaid O.A. was allowed vide order dated 21.12.2015 with the following directions:-

“In view of the above, the Original Application deserves to be allowed, hence allowed. Impugned order of discharge dated 02.05.2013 is set aside with all consequential benefits. The applicant shall be allowed to continue in service on the post of Naik for the remaining period of his rank. Applicant’s continuance in service shall be notional. However, for the purpose of pension and other retiral benefits, the applicant shall be deemed to be in service”.

4. Thus, keeping in view aforesaid directions of this Tribunal, applicant was notionally re-instated in service and was discharged from service notionally w.e.f. 31.12.2009 granting service element of pension. Thereafter, PCDA (P), Allahabad cancelled all previous PPOs and issued fresh PPO No. S/40666/2016 dated 07.10.2016. In this process applicant’s disability element of pension was stopped w.e.f. 01.01.2016 which he was earlier in receipt of. Thereafter, applicant filed another O.A. No. 122 of 2017 before this Hon’ble Tribunal for stoppage of recovery of pension granted to him while notionally re-instated which was allowed vide order dated 20.08.2018 with liberty to file a fresh O.A. for payment of disability pension, as the same being a separate cause of action. Operative portion of the aforesaid judgment is as under:-

“ x x x x Amount of pension which was due to the applicant for the period from 01.06.2004 to 31.12.2009 i.e. the period of notional re-instatement shall not be recovered from the applicant and the respondents are at liberty to treat the

said amount as paid towards part back wages for part salary, if any, amount of pension has already been recovered, the same shall be refunded to the applicant as part back wages or part salary.

Applicant is also at liberty to file fresh O.A. for the payment of disability pension as the same is a separate cause of action”.

5. Learned counsel for the applicant submitted that earlier PPOs bearing Nos DE/013928/2004 (Army) dated 04.09.2004 and DE/CORR/25507/2009 dated 09.11.2009 were cancelled by PCDA (P), Allahabad when applicant was notionally re-instated in service and at the time of notional discharge from service PPO No S/40666/2016 (Army) dated 07.10.2016 was issued with regard to service pension and the disability element has paid upto 31.12.2015. His further averment is that applicant's rounded off disability element for the period 01.06.2009 to 31.12.2015 should not be recovered and applicant be granted rounding off disability element @ 50% w.e.f. 01.01.2016.

6. On the other hand, learned counsel for the respondents submitted that applicant was notionally re-instated in service w.e.f. 01.06.2004 as per this Tribunal's order dated 21.12.2015 passed in O.A. No. 32 of 2015 and notionally discharged from service w.e.f. 31.12.2009 i.e. the day he completed his terms of engagement in the present rank with all consequential benefits. His further submission is that the competent authority has rightly cancelled applicant's PPOs in order to adjust due and drawn emoluments with effect from his notional date of retirement. His further contention is that applicant has already received service pension and disability element of pension. His contention is that since applicant is not entitled to rounding off of disability element prior to 01.01.2016, amount already granted in this regard shall be recovered and for this respondents have already issued letter dated 05.12.2018. He pleaded for dismissal of O.A. on the ground that respondents have executed orders of this Tribunal dated 21.12.2015.

7. We have heard rival submission of learned counsel for the parties and perused the material placed on record.

8. We have been informed at Bar that applicant has already received rounded off disability element for the period from 01.06.2009 to 31.12.2015. This has also been confirmed by Mr. Rajiv Tiwari, Accts officer, PCDA (P), Allahabad and applicant's prayer is limited to grant of rounded off disability element with effect from 01.01.2016 and stoppage of recovery of rounded off disability element already granted to applicant.

9. It is admitted fact that applicant was notionally re-instated in service vide this Tribunal's order dated 21.12.2015 passed in O.A. No 32 of 2015. Applicant was notionally discharged from service w.e.f. 31.12.2009 which means he is entitled to service element as well as disability element w.e.f. his date of notional discharge from service. Since applicant is in receipt of service pension and he has already been granted disability element duly rounded off for the period from 01.06.2004 to 31.12.2015, which makes it clear that applicant is entitled to rounded off disability element w.e.f. 01.01.2016.

10. In view of the above, applicant is held entitled to 50% disability element w.e.f. 01.01.2016.

11. Respondents, are therefore directed not to recover amount already granted to applicant and to pay 50% disability element to applicant w.e.f. 01.01.2016 within four months from today.

12. Default will invite interest @ 8% p.a.

13. No order as to costs.

14. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)

(Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated : April 2021
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