

Court No. 1
Reserved Judgment

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
ORIGINAL APPLICATION NO. 556 of 2017**

Tuesday, this the 17th day of April, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Army No. Govind Prasad son of Shri Mahesha Nand,
Resident of Village Lalpur, Post Office – Padampur Sukhro,
Kotdwar District – Pauri Garhwal. **....Applicant**

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

Verses

1. Union of India, through, Secretary Ministry of Defense (Army), DHQ PO – New Delhi – 11.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. Commanding Officer, 7th Garhwal Rifles, C/o 56 APO.
4. The Officer -in- Charge Records, Garhwal Rifles C/o 56 APO.
5. Principal Controller of Defense Accounts Draupadi Ghat – Allahabad, (UP).

.....Respondents

Ld. Counsel for the Respondents : **Shri A.K. Sahu,
Advocate, Addl Central
Govt Standing 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.

“(a) Issue/pass an order or direction of appropriate nature to the respondents to grant the disability pension to the applicant with effect from 31.01.2001 as the government of India letter dated 31.01.2001.

(b) Issue/pass an order or direction of appropriate nature to the respondents to make the payment arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.

(c) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(d) Allow this application with costs.”

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 27.12.1979 and was discharged from service on 28.02.1995 under Army Rule 13 (3) III (v) of 1954 after rendering 15 years, 02 months & 01 day service. While serving in the Army, on 16.06.1990, the applicant who was then riding a Government motor cycle as a Dispatch Rider, fell down on account of skidding of front wheel of the motor cycle and sustained injury on his right

foot. He was immediately taken to the Military hospital. The Medical Authority diagnosed his disability as "FRACTURE NAVICULAR BONE (RT) FOOT" and placed him in low medical category CEE (Temporary) for six months. Since the Applicant was continuing in permanent low medical category since May 2,1994, his Unit was asked about recommendations for his retention in service. However, the Unit did not recommend for his further retention in service and accordingly, he was discharged from service with effect from 28.02.1995 under Army Rule 13 (3) III (v). Before discharge, he was brought before Release Medical Board for examination which assessed his disability as 11-14 % for five years declaring it as attributable to military service. The claim for disability pension was processed for onward transmission to PCDA (P) Allahabad. However in consultation with the Medical Advisor attached to PCDA (P), the authority concerned adjudicated the claim and assessed the disability as 20% for two years. In consequence, the applicant was granted disability pension at the rate of 20% for two years upto 22 Nov 1997. After expiry of two years, the applicant was again brought before the Resurvey Medical Board on 19.07.1997 at Military Hospital Roorkee which assessed the degree of disability between 1-5% for 10 years. Again his claim for disability pension was processed and forwarded to PCDA (P) Allahabad. The PCDA

(P) Allahabad in consultation with its Medical Advisor, accepted the disability as 20% for three years upto 18 July 2000. The applicant was again brought before the Resurvey Medical Board on 07.04.2000 at Military Hospital Roorkee which assessed his disability as 1-5% for five years. However, on claim for disability pension being forwarded, the PJCDA (P) in consultation with its Medical Advisor, discontinued the disability pension for five years upto 6th April 2005. Consequently, aggrieved by the decision of the PCDA (P) Allahabad, the applicant preferred an appeal. During pendency of appeal, the applicant was again brought before Resurvey Medical Board for examination on 08.04.2006 which assessed the disability between 6-10% for life. The Applicant again preferred an appeal which was forwarded to the Appellate Committee, First Appeal. It is stated that office of DGAFMS considered applicant's appeal and directed for holding of Resurvey Medical Board at Army Hospital (R & R) Delhi Cantt AFMC Pune vide letter dated 07.03.2008. It is stated that the Applicant despite being informed, did not turn up for examination by Resurvey Medical Board at Delhi Cantt Army Hospital. On the other hand, the Applicant aggrieved by rejection of his claim for disability pension filed a writ petition being Writ petition No 305 of 2008 (S/S) in the High Court of Uttarakhand at Nainital assailing his discharge from the Army. The aforesaid

writ petition stood transferred to the Armed Forces Tribunal Lucknow and was renumbered as TA No 367 of 2010. The aforesaid T.A culminated in being dismissed. The Review Application was also dismissed. The Application for leave to Appeal was also rejected. It is in this perspective that the present O.A has come to be filed.

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

4. Substantially, the case of the applicant is that the disability pension was illegally discontinued immediately after 18 July 2000 on account of his disability having been found less than 20%.

5. Per contra, the case of the respondents is that the applicant was firstly discharged from service on withdrawal of sheltered appointment under rule 13 (3) III (v) of Army rule 1954 and secondly his degree of disability was assessed less than 20%. The substance of argument in this connection is that disability pension is admissible to an individual who is invalided out/discharged on completion of terms of engagement from service on account of disability which is attributable to or aggravated by military service and is assessed at 20% or more. The learned counsel for the respondents also raised the issue of petition being barred by the principles of res judicata as his earlier petition

had culminated in being dismissed on merit. The learned counsel also contested the claim for disability pension submitting that the Applicant on being asked to report for examination by Resurvey Medical Board in May 2008 did not turn up and avoided assessment of disability because he was not suffering from any disability.

6. There is no denying that the applicant got disability element @ 50% with effect from 01.01.1996 to 18.07.2000. The disability pension was discontinued with effect from 19.07.2000. In the examination done by the Resurvey Medical Board on 07.04.2000 at Military Hospital Roorkee, the disability of the applicant was assessed as 1-5% (Permanent). However, the PCDA (P) in consultation with its Medical Advisor accepted the disability as 1-5% but confined it to five years. The Applicant was again examined by the Resurvey Medical Board on 08.04.2006 at Military Hospital Roorkee and assessed the disability as 6-10% for life. On the issue of res judicata, it would suffice to say that the earlier T.A was filed assailing the discharge and thus the rejection of the earlier T.A would have no bearing on the adjudication of the present O.A which is purely for grant of disability pension which was discontinued with effect from 19.04.2000.

7. Thus it would appear that the last Resurvey Medical Board was held on 04.04.2006 which assessed the disability

as 6-10% for life. Even the Resurvey Medical Board which was held on 08.04.2000 assessed the disability between 1-5%. Concededly, the disability was never below 1%.

8. On the issue of rounding off of disability pension, the present 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.

9. On the issue of disability being less than 20%, Hon'ble The Apex Court in the case of Sukhvinder Singh in para 9 of the judgment held that **"there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty percent and seems to us to be logically so"**. Hon'ble The Apex Court further held that **"whenever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty percent."** In the same vein, Hon'ble The Apex Court finally held that **"as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension"**.

10. In **Union of India and Ors v Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10th December 2014**) in which Hon'ble the Apex Court nodded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have been invalidated out of service on account of being in low medical category or who has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to be suffering from some disability. The relevant portion of the decision being relevant is excerpted below:

"4. By the present set of appeals, the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

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6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.

8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."

11. In view of the above the Original Application deserves to be allowed.

12. Accordingly the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant @ 20% for life, which would stand rounded off to 50% for life from 19.04.2000 from which the disability pension was discontinued. 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 @ 9% on the amount accrued from due date till the date of actual payment.

13. No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: April, 17, 2018

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