

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**COURT NO. 1 (List A)**

**T.A. No. 579 of 2010**

**Tuesday, this the 31<sup>st</sup> day of January, 2017**

**Hon'ble Mr. Justice D.P.Singh, Judicial Member**

**Hon'ble Air Marshal Anil Chopra, Administrative Member**

Harish Chandra son of Bhagwati Prasad, Resident of  
Jamunipur, P.S. Nigohi, District Jaunpur - Petitioner

Versus

1. Union of India, through Secretary Ministry of  
defence South Block New Delhi.
2. Officer Incharge D.S.C. Records Mill Road  
Cannonore - 670013.
3. C.D.A. (Pension) Allahabad.

- Respondents

Ld. Counsel appeared - Shri Md. Shariq Khan,  
For the Petitioner Advocate

Ld. Counsel appeared - Dr. Shailendra Sharma Atal,  
for the Respondents Sr. Central Govt. Standing  
Counsel.

**Order (Oral)**

1. We have heard Shri Md Shariq Khan, learned  
counsel for the petitioner, Dr. Shailendra Sharma Atal,  
Senior Central Government Standing counsel for the  
respondents, assisted by Maj Soma John, OIC Legal  
Cell and perused the record.

2. Being aggrieved with the discharge from service on 31.01.1991 as contained in Annexure-3 to the petition, petitioner preferred a writ petition, bearing number Writ Petition No. 5506 of 1991 in the High Court of Allahabad at Lucknow Bench, Lucknow, which was allowed vide judgment and order dated 19.12.2002, with a finding that the petitioner is entitled for disability pension. The copy of the judgment and order dated 19.12.2002 (supra) has been filed as Annexure No.10 to the T.A. It appears that without taking note of the finding/ observation recorded by the High Court petitioner's application for extension of service as well as disability pension was rejected.

3. Being aggrieved, the petitioner preferred another writ petition, bearing number W.P. No. 20277 of 2004 in the High Court of Judicature at Allahabad, which has been transferred to this Tribunal, now registered as T.A. No. 579 of 2010.

4. The admitted facts on record are that the petitioner Harish Chandra, a member of Defence Security Corps was discharged from service on 31.01.1991 in pursuance of order dated 17.10.1990 as contained in Annexure No.2 to the T.A. The discharge

order was set aside by the High Court vide judgment and order dated 19.12.2002, which has been rejected by the impugned order. Before the High Court, the petitioner had claimed to set aside the order of discharge and in alternative for payment of disability pension. It is not disputed that the petitioner was enrolled in Indian Army on 19.04.1976 in 118 Battalion Territorial Army and was discharged on 04.02.1991 under Section 16(1) of Territorial Army Act, 1948. It is also admitted to the parties that under the terms and conditions then applicable, as contained in Record Office Instructions, for short 'ROI', the petitioner opted for his engagement in D.S.C. and accordingly the petitioner was re-enrolled on 05.02.1981, initially for five years and thereafter the engagement was extended for two years each i.e. from 05.02.1986 to 04.02.1988, 05.02.1988 to 04.02.1990 and last being from 05.02.1990 to 04.02.1992. But before the petitioner could complete the term of two years, he was discharged on 31.01.1991, under the terms and conditions in ROI, bearing No.2/S/89 dated 25.08.1989 under the low medical category as the petitioner was suffering from obesity (temporary) w.e.f. 27.01.1989 and thereafter (permanent) w.e.f. 10.08.1989.

5. After providing an opportunity of hearing on completion of pleadings, the High Court in Writ Petition No.5506 of 1991 recorded the conclusive finding that though the petitioner is not entitled to service pension having not served for 15 years, which is the qualifying service for entitlement of pension in his category but he is entitled for disability pension. The operative portion of the order dated 19.12.2002 is reproduced here under :-

*"In the result the writ petition is disposed of finally requiring the respondents to consider the claim of the petitioner for grant of disability pension. The respondents shall pass appropriate orders in this regard within a period of one month from the date of receipt of certified copy of this order.*

*No order as to cost."*

A plain reading of the aforesaid judgment of the High Court indicates two things, firstly that the petitioner is not entitled to service pension having not completed the required tenure of service for pension i.e. 15 years. However, High Court found substance in the second submission of the learned counsel for the petitioner that petitioner should have been recommended for disability pension, which was rejected illegally by the C.D.A. Pension. His Lordship recorded a categorical finding that "The claim of the petitioner for disability pension ought to have been allowed by the respondents." The direction/ observation recorded by the Hon'ble High Court seems to be conclusive and should not have been denied by the competent authority while deciding the

representation of the petitioner as contained in Annexure No. 11 to the T.A., which he had made in pursuance of the order passed by the Hon'ble High Court.

6. A perusal of the impugned order dated 05.11.2003, as contained in Annexure No.12 to the T.A., shows that the competent authority has not taken note of the observations made by the High Court regarding petitioner's entitlement for payment of disability pension. The impugned order dated 05.11.2003 seems to be cryptic, which has been passed without considering the order of the High Court aforesaid. Further observation made in the impugned order regarding disability pension of petitioner is that the petitioner's disability has been assessed at less than 20%, hence he was not found entitled for disability pension. So far disability of the petitioner less than 20% is concerned, now it is settled position of law that a person who is in less than 50% disability medical category, his disability should be rounded off to 50%. Hon'ble the Supreme Court in **Union of India and Ors vs Ram Avtar & ors** (Civil Appeal No. 418 of 2012 decided on 10th December 2014) has also noded the benefit of rounding off of disability to 50%.

7. Now the question crops up whether the petitioner is entitled for disability pension. A plain reading of the finding recorded by the High Court indicates that petitioner's claim regarding disability pension was considered by the Hon'ble High Court and he was held to be entitled for disability pension. Once the High Court has recorded a finding that the petitioner should have been granted the disability pension, then it was

not at all open to the respondents to pass a contrary order, ignoring the order passed by the High Court. The respondents while passing the impugned order have not taken into account the order of the High Court, which shows a mechanical discharge of duty and amounts to non application of mind. Once the High Court has recorded a finding regarding payment of disability pension to the petitioner, it was always incumbent upon the authorities to have decided the representation of the petitioner in accordance with the direction/ observation of the High Court. The judgment and order of the High Court is binding precedent on the authorities and it was not open to them to pass an order other than what has been held and directed by the High Court. During the course of hearing, we made a query whether the judgment of the High Court has attained finality, the reply was in affirmative. Since the judgment of the High Court has attained finality, there is no other option open to the respondents, except to comply it in letter and spirit. Doctrine of finality comes in the way to re-consider the issue, which has already been decided by the High Court in conclusive finding.

8. In view of the above, we are of the view that the petitioner is entitled to disability pension in accordance with the observations made by the High Court. Hon'ble the Supreme Court in **Union of India and Ors vs Ram Avtar & ors** (supra) has also noded the benefit of disability of less than 50% by rounding off it to 50%. Since the order passed by the authorities rejecting the disability pension is in violation of the orders passed by the High Court dated 19.12.2002, we feel that it is a fit case where the petitioner should be

paid compassionate cost, which is quantified as Rs.1,00,000/-(rupees one lac).

9. The T.A. is allowed only to the extent of disability pension and rest of the reliefs are denied. Accordingly, the impugned order dated 05.11.2003 as contained in Annexure No.12 to the T.A. is set aside with all consequential benefits. The respondents shall pay disability pension to the petitioner w.e.f. 31.01.1991, i.e. the date of discharge of petitioner from service. Let disability pension alongwith cost and arrears be paid to the him within four months from the date of production of a certified copy of this order before the competent authority. In case the disability pension is not paid within six months, the respondents shall also ensure to pay interest @ 10% per annum from today i.e. the date of delivery/ pronouncement of present order.

10. No order as to costs.

11. The Registry shall ensure to pay fee and expenses to the petitioner's counsel, who was appointed Amicus Curiae in the case, in accordance with the rules.

12. Let certified copy of this order be provided to the learned counsel for the parties within a period of three days on payment of usual charges in accordance with rules.

**(Air Marshal Anil Chopra)**  
**Member (A)**

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

Date: January, 31 ,2017

JPT

