

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 495 of 2021**

Tuesday, this the 08th day of February, 2022

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

Alok Kumar Gupta (No. SS-32653P Ex Capt) Son of Shri Swatantra Kumar Gupta, resident of House No.G-11, Shivalik Nagar, Haridwar-249403.

..... Applicant

Learned counsel for the : **Shri Yashpal Singh**, Advocate.
Applicant

Versus

1. Union of India through, Secretary, Ministry of Defence South Block, New Delhi.
2. Additional Director General Personnel Services, Adjutant General's Branch/PS-4 (Imp-II), Integrated Headquarters of Ministry of Defence (Army), Plot No. 108 (West), Church Road, Brassey Avenue, New Delhi-110001.
3. Additional Director General of Manpower (Policy & Planning)/MP-5 (B), Adjutant General's Branch Integrated Headquarters of Ministry of Defence (Army) Wing No.3, Ground Floor, West Block-III, RK Puram, New Delhi-110066.
4. Principal Controller of Defence Accounts (O), Goliber Maiden, Pune-1.
5. Principal Controller of Defence Accounts (pension), Draupadi Ghat, Allahabad-211014.

.....Respondents

Learned counsel for the : **Ms. Anju Singh**,
Respondents. Central Govt Counsel

ORDER

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 directing the respondents to consider and pay service element of disability pension with effect from 23.08.1991 including arrears with interest.*
- (b) *Issue / pass an order directing the respondents to consider and provide the benefit of rounding off of the disability with effect from 01.01.1996 including arrears with interest.*
- (c) *Issue/ pass an order directing the respondents to consider and provide calculation sheet /details of the arrears of pension credited in the bank account of the applicant on 17.05.2019 and 29.05.2019 and also pay up to date interest thereon.*
- (d) *Issue / pass any other or directions as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (e) *Allow this Original Application with cost.*

2. Brief facts of the case giving rise to this application are that the applicant was commissioned in the Indian Army on 23.08.1986 as a 2nd Lieutenant in medical category SHAPE-I. While undergoing training at Infantry School, Belgaum he sustained leg injury on 24.03.1987 and was provided treatment in Military Hospital, Belgaum. On successful completion of training he was posted to 2/9 GR in the month of November, 1990 and promoted to the rank of Capt. While serving with 116 Inf Bde Camp as he was about to complete his 05 years contractual period, his Release Medical Board (RMB) was carried out at Military Hospital, Dehradun on 21.08.1991. The medical board recommended the applicant to be released in low medical category A3 (Permt) for the disability 'Tear Medial Meniscus Knee (Lt) (Optd)' and assessed his disability @ 30% for two years. Accordingly, he was discharged from service in low medical category w.e.f. 23.08.1991 (FN), SOS on

19.09.1991 (AN). After discharge from service the applicant was not granted any pension. He submitted numerous representations to the respondents and ultimately on 17.11.2014 (Annexure-5) a letter was issued to PCDA (P) Allahabad directing to grant 30% disability pension for two years with further direction to hold applicant's Re-assessment Medical Board (RAMB) for fresh assessment of his disability percentage. Despite issue of orders for payment of disability pension, when no payment was made to the applicant as also RAMB being not conducted, the applicant filed O.A. No 442 of 2017 in this Tribunal titled **Alok Kumar Gupta vs Union of India & Ors.** During pendency of this O.A. PPO granting disability pension for two years was issued and as such this O.A. was dismissed vide order dated 17.01.2018 being infructuous. Thereafter, pursuant to letter dated 17.11.2014 his RAMB was conducted at Military Hospital, Roorkee on 11.07.2018 (Annexure-3) which assessed his disability @ 30% for life. Accordingly, the applicant was granted 30% disability pension for the period 24.08.1993 to 31.12.2015 and broad banding to 50% w.e.f. 01.01.2016 for life. Applicant has filed this O.A. for grant of service element of disability pension w.e.f. 23.08.1991 onwards and rounding off of disability element of pension w.e.f. 01.01.1996 including arrears with interest.

3. Learned counsel for the applicant pleaded that applicant is entitled to disability pension (consisting of service element and disability element) w.e.f. 23.08.1991 i.e. the date from which he was released from service as his disability was regarded as attributable to military service by the medical board. He further submitted that though applicant is entitled to rounding off of disability element w.e.f. 01.01.1996, yet he was

granted rounding off benefits w.e.f. 01.01.2016. Relying upon para 173 and 179 of Pension Regulations for the Army, 1961 (Part-I), learned counsel for the applicant submitted that applicant is entitled to disability pension w.e.f. 23.08.1991 as his medical disability is held @ 30% attributable to military service. His contention is that applicant has been denied service element of disability pension and interest on delayed payment of his dues. In support of his contention with regard to payment of interest on delayed payment of his dues, learned counsel for the applicant has relied upon the following judgments:-

- (i) Hon'ble Supreme Court judgment in the case of State of Kerala and Ors vs M. Padmanabhan Nair, AIR 1985 SC 356.
- (ii) Hon'ble Supreme Court judgment in the case of SK Dua vs State of Haryana & another, (2008) 1 UPLBEC 301.
- (iii) Hon'ble Supreme Court judgment in the case of Dr. Uma Agrawal vs State of UP & another, (1999) 2 UPLBEC 1006 (SC).
- (iv) Hon'ble Allahabad High Court judgment dated 12.10.2010 passed in the case of Shripati Tripathi vs State of UP.

4. Per contra, the respondents have filed counter affidavit stating that earlier as per policy letter dated 30.11.1977 non regular officers were required to exercise option for grant of disability pension. He further submitted that as per revised policy letter dated 30.08.2006 non regular officers who are found in low medical category at the time of release as against the one in which they were commissioned initially and where disability is accepted as attributable to or aggravated by military service, will be entitled to service element of disability pension after taking into account the full commissioned service rendered by them as in the case of regular commissioned officers since non regular commissioned officers have been brought at par with the regular commissioned officers in the matter of grant of disability pension. He further submitted that the

service element of disability pension in respect of non regular commissioned officers who retired before the date of issue of the Govt policy letter dated 30.08.2006 and who had exercised their option to get disability pension comprising of disability element plus service element shall be revised prospectively in accordance with these orders. In the case of aggravation, the benefit of service element as per these orders will be applicable only to those who retire on or after the date of issue of the letter. He submitted that since the applicant has retired prior to issue of policy letter dated 30.08.2006 he is not entitled to service element of disability pension. Respondent No 5 has also filed counter affidavit stating that since the applicant has rendered only 05 years and 28 days service, he is not entitled to service element of disability pension. His further submission is that rounding off benefits are not applicable to the applicant as para 173 of Pension Regulations for the Army, 1961 (Part-I) is applicable for the individuals who are invalided out of service whereas the applicant was released from service. His other submission is that since notification of PPO has been delayed due to non receipt of requisite documents from the applicant in time, therefore he is not entitled to interest on delayed payment of arrears. Learned counsel for the respondents pleaded for dismissal of O.A. on the ground that disability @ 30% upto the period 31.12.2015 has already been granted and disability pension duly rounded off to 50% for life w.e.f. 01.01.2016 has also been released to the applicant.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. SS-32653P Capt Alok Kumar Gupta was commissioned in the Army on 23.08.1986 as Short Service Commissioned officer and released from service on 19.09.1991 (AN) (SOS) after completion of contractual period. The officer suffered disability 'Tear Medial Meniscus (Lt) Knee Optd' during military service and his disability was regarded as attributable to military service and degree of disablement was assessed at 30% for two years by the RMB dated 21.08.1991 held at the time of release. His claim for disability pension was adjudicated by the competent authority and he was sanctioned 30% disability pension for two years w.e.f. the date of his discharge vide letter dated 17.11.2014. His RAMB was carried out at Military Hospital, Roorkee on 11.07.2018 which assessed his disability @ 30% for life. Accordingly, vide sanction letter dated 14.02.2019 the applicant has now been sanctioned/granted disability pension @ 30% for life w.e.f. 28.08.1993 and broad banding benefits w.e.f. 01.01.2016.

7. Applicant in para 4.14 of O.A. has admitted that pursuant to letter dated 17.11.2014 and 14.02.2019 although PPO has not been received, the applicant is in receipt of Rs 15,936/- per month as pension besides the following amounts credited to his bank account:-

(i) Rs 6,73,295/- on 17.05.2019.

(ii) Rs 5,38,098/- on 29.05.2019.

8. We have perused letter dated 17.11.2014 and 14.02.2019 by which disability pension @ 30% has been sanctioned. Since the disability pension consists of service element and disability element, denial of service element to the applicant is not justified in the eyes of law.

9. Thus, considering the facts and circumstances of the case, the applicant is held entitled to disability pension @ 30% for two years w.e.f. 23.08.1991 (which has already been sanctioned vide letter dated 17.11.2014), 30% disability pension for the period from 24.08.1993 to 31.12.2015 (which has already been sanctioned vide letter dated 26.02.2019) and 50% disability pension w.e.f. 01.01.2016 for life.

10. In view of the above, the O.A. is **allowed**.

11. The respondents are directed to grant service element of disability pension to the applicant w.e.f. his date of discharge, if not already granted and issue PPO forthwith mentioning all details of arrears released to applicant's bankers on 17.05.2019 and 29.05.2019 within a period of two months from today. Default will invite interest @ 8% p.a.

12. With regard to payment of interest on delayed payment of arrears, we have gone through the citations relied upon by learned counsel for the applicant and we find no record which indicates that the applicant had approached the authorities for grant of disability pension when he was discharged from service. Therefore, he seems to be not entitled to interest on delayed payment of arrears as the applicant had approached this Tribunal for grant of disability pension in the year 2017 i.e. after 25 years from his date of discharge.

13. No order as to costs.

14. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 08.02.2022

rathore