

Court No.2
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 310 of 2017

Friday this the 24th day of November, 2017

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex Sub H P S Solanki (JC 421006H)
S/o Late Sri Raghuvir Singh Solanki
Vill-Sarsaith, P.O. Sarsainaru
Tehsil – Sahawar, Dist-Kasnsi Ram Nagar (Kasganj)

..... **Applicant**

By Legal Practitioner – Col A.K. Srivastava (Retd), Advocate

Versus

1. The Secretary, Govt of India (MoD)
South Block DHQ P.O. New Delhi-110001.
2. The Chief of Army Staff,
Integrated HQ of MoD (Army)
South Block DHQ P.O. New Delhi-110001.
3. The Addl Dte Gen of Personnel Services,
Adjutant General's Branch/PS-3
Integrated HQ of MoD (Army)
Sena Bhawan-110001, DHQ P.O. New Delhi-110001.
4. Officer Commanding
Records Mechanised Infantry,
Ahmadnagar

..... **Respondents**

By Legal Practitioner – Shri Ashish Kumar Singh
Learned Counsel for the Central Govt.

ORDER

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

1. By means of this Original Application, filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the prayer for the following reliefs :-

“(a) Issue/pass an order or direction of appropriate nature to quash/set aside respondents impugned order dated 03.03.2017 passed by the Mechanised Infantry Records letter dated 02.03.2017 (Annexure No. 1) denying 50% disability pension after rounding off his 40% composite disability pension due to disabilities of 30% Primary Hypertension and 20% disability CVA Infract (RT) Superior Frontal Gyrus for life.

(b) Issue/pass an order or direction of appropriate nature to the respondents to issue a disability PPO duly founded off to 50% w.e.f. his date of discharge on 01 Nov 2016.

(c) Issue/pass an order or direction of appropriate nature to the respondents to include his 1-5% disability due to obesity and grant him total aggregate of 51 to 55% against 30% disability due to Primary Hypertension, 20% disability due to CVA Infract (Right) and 1-5% disability due to obesity and then carry out its rounding off to 75% in terms of MoD letter dated 31 Jan 2001 duly supported by decisions of Hon’ble Supreme Court w.e.f. 01 Nov 2016.

(d) Issue/pass an order or direction of appropriate nature to the respondents to grant war injury disability pension to the applicant w.e.f. since his disabilities occurred in CI OPS in Field Area.

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

(f) Allow this application with costs.”

2. In brief the facts necessary for the purpose of the instant O.A. may be summed up as under.

3. The applicant was enrolled in Indian Army on 21.10.1988 and he was retired in low medical category with 40% composite disability as per the Release Medical Board held on 31.10.2016. The applicant was issued PPO for the service with 40% composite disability pension. The applicant preferred statutory appeals to the respondents for the benefit of rounding off 40% composite disability pension to 50% which was rejected.

4. It is admitted in the counter affidavit filed on behalf of the respondents that at present the applicant is getting disability pension @ 40% and benefit of 50% rounding off of the disability pension is not applicable to the applicant as he was discharged on completion of service period and was not invalidated out from service or deemed invalidated out.

5. The submission of the learned counsel for the applicant is that he is getting disability pension element of the pension @40% and he is entitled for the benefit of broad banding in terms of order passed by the Hon'ble Apex Court in the case of **Union of India and Ors vs. Ram Avtar & ors (Civil Appeal No. 418 of 2012 dated 10th December 2014)**.

6. The learned counsel appearing for the respondents, on the other hand, referring to the policy decision of Govt. of India dated 31.01.2001, has submitted that since the applicant has not been invalidated out from service, he is not entitled to the benefit of "broad-banding". The learned counsel has further submitted that the said policy decision relates to grant of "broad-banding" benefit to the persons who have been invalidated out from service.

7. It is not disputed that the applicant was enrolled in Indian Army on 21.10.1988 and he was discharged in low medical category in the year 2016 after about 28 years of colour service and he has been receiving disability element of the pension 40% for life w.e.f. date of superannuation as is evident from the PPO issued by PCDA (P) Allahabad.

8. The issue relating to the grant of rounding off benefit of the disability element of pension to the persons who have been discharged after completion of terms of engagement is no longer res-integra in view of the order passed by the Hon'ble Supreme Court in Ram Avtar (supra), whereby the Hon'ble Supreme Court has directed the respondents to grant the said benefit also to the personnel who have not only been invalidated out from service but to other categories also. The Govt. of India has also decided to implement the aforesaid direction of the Hon'ble Supreme Court to grant the benefit of "broad-banding" the disability element of pension to the Armed Forces personnel, who have retired or discharged on completion of the terms of engagement with disability aggravated by or attributable to military service from the date mentioned in the respective Court orders, which has been communicate by the Under Secretary to Govt. of India, Ministry of Defence, Department of Ex-Servicemen Welfare D (Pension/Legal) vide letter P.No. 3(11)2010-D Pen/Legal-Pt.V dated 18.04.2016 to the Chiefs of all three services. Relevant portions of the letter is set out below :-

“(a) The Hon'ble Supreme Court vide order dated 10.12.2014 dismissed more than 800 Civil Appeals tagged with Civil Appeal No. 418 of 2012 filed by the Union of India Vs Ram Avtar challenging grant of broad banding of disability element by AFTs to Armed Force personnel other than “Invalided out” from service. The Hon'ble Supreme Court ruled that an Armed Force Personnel retired on completion of tenure with disability aggravated by or attributable to military service is eligible for broad banding of disability pension/element.

(b) Accordingly, approval of competent authority is herby conveyed for implementation of Court/AFTs orders granting broad banding of disability element to an armed force personnel retired or discharged on completion of terms of engagement with disability aggravated by or attributable to military service from the date mentioned in respective court orders.”

9. That being the position, we are of the considered opinion that the applicant is entitled to the benefit of broad banding of the disability element of pension.

10. In view of the above, the applicant is entitled to the benefit of broad banding of the disability element of the pension at the rate of 50%.

11. The applicant is not entitled to the relief No. (c) because this Tribunal is not sitting in appeal over the opinion given by Release Medical Board which has assessed composite disability of the applicant to be 40%. The prayer of the applicant that disability which was 1-5% due to obesity should also be added. This submission of the learned counsel for the applicant is misconceived and has no legs to stand. Prayer No. (c) of the applicant has no legal force and deserves to be declined.

12. Accordingly, Original Application is **allowed**. The respondents are directed to issue a fresh PPO to the applicant by rounding off of the disability pension from 40% to 50% for life from the date of his discharge (subject to verification). The respondents are further directed to pay the enhanced disability pension alongwith the arrears within 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 costs.

14. Let a plain copy of this order, duly countersigned by the Tribunal Officer, be given to the parties after observance of requisite formalities.

(Air Marshal BBP Sinha)
Member (A)

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

Dated : November, 2017
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