

RESERVED
COURT NO 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 196 OF 2019

Monday, this the 30th day of September, 2019

“Hon’ble Mr. Justice Virender Singh, Chairperson
Hon’ble Air Marshal BBP Sinha, Member (A)”

Ex AC Raj Narayan Tiwari, (Service No 280108) S/O Shri RD Tiwari, Village-Uttimapur, Tehsil-Ballia, Distt-Ballia, Uttar Pradesh.

.....Applicant

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

Versus

1. Union of India through Defence Secretary, Govt of India, South Block, New Delhi-110011.
2. Chief of Air Staff, Air HQ, Vayu Bhawan, Rafi Marg, New Delhi.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014.
4. Joint Controller of Defence Account (Air Force), Subroto Park, New Delhi-10.
5. Director-III (DP), Directorate of Air Veteran, Air HQ, Subroto Park, New Delhi-10.
6. Treasury Officer, Treasury Ballia, UP.

.....Respondents

Ld. Counsel for the : **Shri Yogesh Kesarwani**,
Respondents. Central Govt Counsel.

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. The present application has been filed under Section 14 of the Armed Forces Tribunal, Act, 2007 for grant of disability pension. The applicant has sought the following relief:-

- (i) *The Hon’ble Tribunal may graciously be pleased to set aside Impugned Order No. DCA/Pen-2/Court Case/Corres/Vol-V dated 20.09.2018, passed by Senior Account Officer, Joint Controller of Defence Account (Air Force) Subroto Park, New Delhi-10 (Annexure A-8 of this O.A.).*
- (ii) *This Hon’ble Tribunal may graciously be pleased to direct Respondents to restore the disability pension since 21.04.1993 and continue to pay the disability pension till life, in terms of PPO No AF/DRA/161/2001, as confirmed by Respondent No 5 vide letter dated 22.04.2018 (Annexure A-2 to this O.A.).*
- (iii) *This Hon’ble Tribunal may graciously be pleased to direct to Respondents to grant benefits of broad banding with effect from 01.01.1996 and grant him disability pension for disability 50% (by rounding off) since 01.01.1996 to life.*
- (iv) *This Hon’ble Tribunal may graciously be pleased to direct the Respondents to issue the revised PPO granting disability pension for 50% disability since 01.01.1996 for life.*
- (v) *This Hon’ble Tribunal may graciously be pleased to direct Respondents to pay the entire arrears of disability pension, @ 20% disability, which accrued, after 21.04.1993 till 31.12.1995 and thereafter giving the benefit of broad banding @ 50%, arrears of disability pension to be paid, since 01.01.1996 till actual date of payment.*
- (vi) *This Hon’ble Tribunal may grant any other and further relief to applicant as it deem fit, just and proper in the facts and circumstances of the case.*
- (vii) *This Hon’ble Tribunal may award the cost of petition to applicant.*

2. At the very outset it may be observed that the petition for grant of disability pension has been preferred by the applicant with delay of 25 years, 01 month and 02 days. Since payment of disability pension involves recurring cause of action, the delay was condoned vide order dated 28.02.2019.

3. Brief facts of the case are that the applicant was enrolled in the Indian Air Force (IAF) on 12.04.1965 and was discharged from service w.e.f. 24.06.1974 due to the disability ‘CSOM Bilateral’ in low medical

category having rendered 09 years and 74 days of service. The applicant's disability element was assessed @ 20% for two years attributable to military service. Accordingly the applicant was issued with PPO No D/4352/80 to this effect and granted disability pension for two years. Subsequently four Re-Survey Medical Boards (RSMBs) were conducted on the applicant and the last RSMB held on 11.09.1992 assessed the applicant's disability @ 20% for life and PPO No AF/D/RA/161/2001 to this effect was issued. The applicant has received disability pension till 20.04.1993 through Treasury Officer, Ballia (UP) but the same was stopped w.e.f. 21.04.1993. On inquiry made by the applicant, the Treasury Officer Balia informed him about loss of the said PPO (Ref Annexure A-6 to the O.A.). However, a copy of the said PPO No AF/D/RA/161/2001 has been filed by the respondents along with counter affidavit and marked as page No 107 which shows that the applicant is in receipt of 20% service element of disability pension for life w.e.f. 11.09.1992. The applicant has approached this Tribunal for grant of rounding off of disability pension w.e.f. 01.01.1996, hence this O.A.

4. Ld. Counsel for the applicant submitted that the applicant has been receiving service element and disability element regularly as per opinion of RSMBs. He pleaded for rounding off of disability pension w.e.f. 01.01.1996 alongwith arrears.

5. On the other hand, Ld. Counsel for the respondents conceded that the applicant is in receipt of disability pension as per PPOs issued from time to time and he is entitled to rounding off of disability pension w.e.f. 01.01.2016 in terms of pra 3 (b) of Government of

India, Ministry of Defence letter dated 08.08.2016 and not from the date of his discharge.

6. We have heard Ld. Counsel for the parties and perused the records.

7. This is a unique case where the applicant has a PPO for disability element for life vide PPO No AF/D/RA/161/2001. However his payment was stopped by Treasury Officer, Ballia (UP) in 1993, on the ground that his PPO is lost. In this context the applicant has filed the present O.A. However in the Rejoinder Affidavit the applicant has conceded that based on the loss certificate issued by Treasury Officer, Ballia, a duplicate PPO of AF/D/RA/161/2001 has been issued to the Treasury Officer, Ballia (UP) on 11.12.2018. Thus based on this duplicate PPO the applicant is entitled for the complete arrears of his disability element since 1993. Since this is a case where the applicant has suffered a financial loss and harassment because of negligence i.e. loss of PPO at Treasury Officer, Ballia (UP) hence he will be entitled to full arrears w.e.f. 1993.

8. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014). Hence the applicant is eligible for the benefit of rounding off from 20% to 50% w.e.f. 1996 but arrears are limited to three years preceding the date of filing of this O.A. in line with the law settled on limitations vide Hon'ble Supreme Court in the case of **Shiv Dass vs Union of India & Ors**, 2007 (3) SLR 445.

9. Thus the O.A. succeeds and is hereby **partly allowed**. The respondents and Treasury Officer, Ballia (UP) are directed that the applicant gets his disability element arrears since 1993 in line with the duplicate PPO issued by PCDA (P), Allahabad. Additionally the applicant is to be granted the benefit of rounding off from 20% to 50% for life from 1996. However due to law of limitations the arrears of broad banding of disability element shall be restricted to three years prior to the filing of the present Original Application. The date of filing of the O.A. is 28.11.2018. This order shall be complied with by the respondents within four months from the date of presentation of a certified copy of this order failing which the applicant shall be further entitled to interest at the rate of 9% per annum from the due date, till date of actual payment.

No order as to cost.

(Air Marshal B.B.P. Sinha)
Member (A)

Dated: September, 2019

gsr

(Justice Virender Singh)
Chairperson