

**IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH,
GUWAHATI**

O.A. NO. 26 OF 2014.

PRESENT

**HON`BLE MR. JUSTICE V.PERIYA KARUPPIAH, MEMBER (J)
HON`BLE LT GEN SANJIV CHACHRA, MEMBER (A)**

Ex-Lnk Abhiman Sharma

..... **Appellant/Petitioner**

Miss Rita Devi,
Mr. A.R.Tahbildar,
Ms S.J.Deka,
Legal Practitioners for
Appellant/Petitioner

-Versus-

1. The Union of India,
Represented by the Secretary,
Ministry of Defence, Sena Bhawan,
New Delhi .
2. ASC Records (AT),
PIN-908763
C/o 56N APO.
3. The Senior Accounts Officer,
Principal Controller of Defence Accounts (Pension),
Allahabad, PIN- 211014, Uttar Pradesh.

..... **Respondents**

Mr.Nilutpal Baruah, Ld. CGSC
Legal Practitioner
for the Respondents.

Date of Hearing : 30.06.2015

Date of Judgment & Order : 30.06.2015

JUDGMENT & ORDER

(By V.Periya Karuppiah,J.)

This application has been filed by the applicant for grant of enhanced disability pension at the rate of 50% instead of 20% as per the provision of Pension Regulations For the Army, Part-I, 2008, and to pay the arrears on disability pension from the date of his retirement, after setting aside the order of denial to pay 50% disability pension.

2. The factual matrix of applicant's case would be as follows:

The applicant was serving in the 508 ASC Battalion, Budkharbu on 16.4.2009. He was enrolled as Sepoy in the Army Supply Corps on 10.10.1989. After successful completion of his training he served in different Battalions of the Army Supply Corps and he was promoted to the rank of Lance Naik. The applicant sustained deep flame burn injury while he was attempting to douse the fire and he was treated in Command Hospital, Chandimandir. The applicant's right side, from face to lower abdomen, has got severe burn injury and it also caused contracture of his right hand fingers and thumb which invalidated him from doing his duty. His disability was caused by the burn injury and the same was assessed by the Command Hospital, Chandimandir as 20% and he was placed in lower Medical category P3. The applicant was examined by the Medical Board in Medical Hospital, Namkum and the report was submitted on 11.8.2010 placing him in lower medical category for 20% disability caused due to deep flame burn injury and it is attributable to his military service. After the retirement of applicant on 30.9.2011 the applicant was granted disability pension at Rs. 791/- PM only on the basis of the Medical Board's assessment of 20% disability. The claim of the applicant for the enhanced disability at 50% as per the government policy was not considered by the respondents. Finally, the applicant submitted a representation on 7.12.2012 requesting to enhance his disability pension from 20% by rounding off to 50%. The respondents have replied on 31.12.2012 that the applicant would be entitled to 20% disability only and

the applicant should not submit any more petition in this aspect in future. Therefore, the applicant has filed this application seeking for grant of enhanced disability pension at 50% from 20% assessed by the Medical Board. Thus, the application may be allowed.

3. The respondents have not filed any reply statement despite sufficient opportunities afforded to them. However, respondents submitted that they would submit objections to the claim of the applicant in the form of oral arguments. Accordingly, the respondents were permitted to do so through their Standing Counsel.

4. We have heard Mr. A.R.Tahbildar, learned counsel for the applicant, Mr. N.Baruah, learned Central Govt. Standing Counsel, assisted by Major A.Dahiya, learned JAG Officer for the respondents. We also perused the documents produced before us.

5. On the above pleadings and the submissions made by the parties, we find the following points emerged for consideration:-

(i) Whether the impugned order of the respondents dated 31.12.12 and other orders denying the grant of disability pension to the applicant at 50% rounded off from 20%, are liable to be quashed ?

(ii) Whether the applicant is entitled to the grant of disability pension at 50% after being rounded off from 20%, as opined by the Medical Board ?

(iii) To what relief the applicant is entitled for ?

6. We have given our anxious thoughts to the arguments advanced on either side apart from thorough scrutinization of the documents.

7. Points No. (i) and (ii) :

The indisputable facts are that the applicant was enrolled as Sepoy in the Army on 16.10.89. After he was given training, he served in different Battalions and was promoted to the rank of Lance Naik and during his service he met with a fire accident on 16.4.2009 and the applicant was injured and was admitted in the Command Hospital at Chandimandir. However, the applicant's right side from face to lower abdomen got severe burn injuries which resulted disability. The further facts are that the applicant was referred to Medical Board proceedings in order to assess his medical category which was assessed in lower level and the disability was also quantified at 20% due to deep flame burn injury which was opined as attributable to military service were also admitted. Apart from that, the applicant retired from service on 30.9.2011 and on his retirement the applicant was granted disability pension of Rs. 791/- PM for the disability of 20% only are also not disputed.

8. The claim of the applicant to enhance the disability pension at the rate of 50% after being rounded off from 20% was refused by the respondents on different occasions, including through a letter dated 7.12.12. Thus the request of the applicant for the grant of disability pension at 50% duly after broad banded was not accepted by the respondents. Therefore, the applicant has knocked the door of this Tribunal for his redressal. The only point we have to decide is whether the applicant is entitled for enhancement of disability pension from 20% to 50%, as claimed by him? No doubt, the Medical Board proceedings would disclose that the disability of the applicant, namely, 20% deep flame burn injury was sustained by the applicant and the probable duration was opined as throughout his life and the said injury was attributable to military service. The applicant was given shelter employment till his superannuation on 30.9.11. At the time of his retirement he was not granted with a disability pension of enhanced disability of 50% but was given disability pension at 20% only. It was argued by the learned Counsel for the applicant that the applicant is entitled to the benefits of the Govt. of India's letter dated 31.1.2001 towards broad banding. No doubt, as per Para 7.2 of the said letter the disability of an

individual shall be enhanced or rounded off to various levels as given in the tabular column. Accordingly, the disability from 20% till 49% shall be broad banded to 50%. Admittedly, the applicant's disability was conceded as attributable to military service. It is a well known fact that the benefits given under the said letter of Govt. of India, Ministry of Defence, dated 31.1.2001, was incorporated in the Pension Regulations for the Army, Part-I, 2008, in Para 94 . For better appreciation the Para 94 is extracted as hereinbelow:

"AMOUNT OF DISABILITY PENSION

94. The amount of disability pension consisting of service element and disability element shall be as follow:-

(a) SERVICE ELEMENT: The amount of service element which is payable for life shall be equal to the retiring pension determined as per Regulation 36. For this purpose the reckonable qualifying service shall mean the actual qualifying service rendered by the Officer plus the full weightage appropriate to the rank held at the time of invalidment.

(b) DISABILITY ELEMENT: The rate of disability element for 100% disability shall be Rs. 2600/- per month. Disability lower than 100% shall be reduced with reference to percentages as laid down in clause (c) below provided that where permanent disability is not less than 60%, the disability pension (i.e. total of service element plus disability element) shall not be less than 60% of the reckonable emoluments last drawn by the Officer. The disability element will be payable for the period for which disability has been accepted.

© The extent of disability or functional incapacity in shall be determined in the following manner for the purpose of computing the disability element:-

Percentage of disability Element as finally accepted	Percentage to be reckoned for computing disability element
Less than 50	50
Between 50 and 75	75
Between 76 and 100	100 "

9. The applicant was in Army Service as on 1.7.2008 and he retired from service on 30.9.2011. Therefore, the relevant Pension Regulations applicable to the applicant is "Pension Regulations for the Army, Part-I, 2008,". According to the above paragraph we see that any disability

assessed by Medical Board at 20% or above, upto 49%, shall be broad banded to 50%. However, this Rule has not been applied by the respondents before refusing the claim of the applicant. The respondents, who are obliged to give benefit under the aforesaid Pension Regulation, have failed to grant the benefit to the applicant. Therefore, it has become necessary for us to quash the impugned orders passed by the Respondents denying the enhancement of the disability element from 20% to 50%, as sought for by the applicant. Therefore, the applicant is found entitled to 50% of disability element of pension from the date of his retirement. We hereby direct the respondents to issue corrigendum accordingly in favour of the applicant and to pay arrears payable to him at the rate of 50% disability. Accordingly, both the points are decided in favour of the applicant.

10. Point No. (III)

In view of our findings reached in Points No. (i) and (ii) that the applicant's claim that the disability of 20%, as opined by the Medical Board proceedings, should be enhanced to 50% as per Pension Regulations, the application filed by the applicant for that purpose is liable to be allowed. Accordingly, the respondents are hereby directed to pay the difference of disability element of pension payable to the applicant from the date of retirement (30.9.2011) till this date to be calculated at 50% and also to issue corrigendum to that effect for future payment also within a period of 3 (three) months from today. Failing to comply, the respondents are liable to pay the arrears to the applicant along with an interest @ 9% per annum till it is fully paid.

11. In the result, the application is allowed. No order as to costs.

MEMBER (A)

MEMBER (J)

