

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

**O.A. 66/2016**

**PRESENT**

**HON'BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)  
HON'BLE VICE ADMIRAL MP MURALIDHARAN, MEMBER (A)**

**Smt. Marami Soud**  
W/o No. 14461820M  
Ex- Hav Late Ajoy Kumar Soud  
Vill-Senabar  
PO-Khetri  
Dist-Kamrup, Assam

**..... Applicant.**  
By legal practitioners for  
Applicant.  
**Mrs Rita Devi,**  
**Mr. AR Tahbildar,**

**-Versus-**

- 1. Union of India,**  
Represented by the Secretary  
Ministry of Defence  
Sena Bhawan, New Delhi-1
- 2. The Artillery Records**  
Nasik Road Camp  
PIN (APS)-908802  
C/o-56 APO
- 3. Station Cell,**  
HQ 51 Sub Area  
PIN-900328  
C/o 99 APO
- 4. Additional Directorate General,**  
Personnel Service, PS-4(d),  
Adjutant General's Branch  
IHQ of MoD(Army), DHQ, PO-New Delhi
- 5. The Principal Controller of Defence**  
Accounts (Pension),Allahabad'  
Pin-211014  
Uttar Pradesh

**..... Respondents**  
By legal practitioners for  
Respondents.  
**Mr. C. Baruah, CGSC.**

Date of hearing : 21.03.2017

Date of order : 21.03.2017

### **ORDER**

*(Per BP Katakey, Member(J))*

1. This is a very unfortunate case, where the applicant, who is the widow of Late Hav Ajoy Kumar Soud has to approach this Tribunal claiming the benefit of the disability element of the pension @ 20% w.e.f. 01.11.2003 till 08.07.2007 and also to grant the benefit of broadbanding of disability element of the pension from 40% to 50% from 09.07.2007 till the date of his death with interest thereon.

2. The applicant's husband was enrolled in the Indian Army as Sepoy on 15.10.1979. While he was in service, he was diagnosed with Coronary Artery disease with severe LV dysfunction in the year 2001, while posted in Jhanshi in the State of Uttar Pradesh, for which he was treated in hospitals in Jhanshi and CTC Pune. The applicant's husband retired from service on attaining the age of superannuation on 01.11.2003. The Released Medical Board held on 01.05.2003 found the disability, namely, Coronary Artery disease with severe LV dysfunction, percentage of which was found to be 20%. The released medical board, however, opined that such disability from which the applicant's husband found to have suffered was neither attributable to nor aggravated by military service. The applicant's husband being not satisfied made several representations seeking disability element of the pension based on which decision was taken in the year 2005 to conduct Review Medical Board. Accordingly the Review Medical Board was conducted on 09.07.2007, which has opined that the percentage of disability of the applicant's husband is 40% and it was attributable to the service since the applicant was a part of 'Operation Parakram' from 02.01.2002 to 14.11.2002. Based on the said opinion of the Review Medical Board, which was accepted by the competent authority, the disability element of the pension @ 40% has been sanctioned to the applicant w.e.f. 09.07.07. The applicant has filed this OA claiming the disability element of the pension with rounding off benefit w.e.f the date of retirement of her husband i.e. 01.11.2003 with interest thereon.

3. We have heard Mrs. Rita Devi, learned counsel appearing for the applicant and Mr. C. Baruah, learned CGSC appearing for the respondents.

4. Learned counsel for the applicant referring to the averments made in the application as well as the counter affidavit filed by the respondents has submitted that since it is apparent that the Review Medical Board has assessed the percentage of the disability of the applicant's husband as 40%, which was found to be aggravated by military service, there is no reason as to why the applicant's husband should not be granted the said benefit w.e.f. the date of his retirement i.e. 01.11.2003 with further benefit of rounding off in view of the Judgment dated 10.12.2014 passed by the Hon'ble Supreme Court in ***Union of India & Others Vs. Ram Avatar*** in Civil Appeal No. 418 of 2012, as well as the interest thereon.

5. Learned counsel for the respondents on the other hand referring to the averments made in the counter affidavit as well as the records produced before this Tribunal has submitted that though the Released Medical Board in its proceeding dated 01.05.2003 found the percentage of disablement of the applicant's husband as 20%, the same having been found to be neither attributable to nor aggravated by military service, no disability element of the pension was paid to the applicant's husband which, however, has been found at 40% w.e.f. 09.07.07 based on the opinion of the Review Medical Board which has opined that the percentage of disablement of the applicant's husband was 40% and such disability is aggravated by the military service. Learned counsel, therefore, submits that the applicant is not entitled to disability element of the pension @ 40% w.e.f. 01.11.2003 as claimed in the OA. It has also been submitted that the applicant's husband is not entitled to rounding off benefit as he was not invalidated out from the service.

6. The arguments advanced by the learned counsel for the parties received our due consideration. We have also perused the pleadings of the parties.

7. The applicant's husband retired from service on 01.11.2003. The Released Medical Board in its proceeding dated 01.05.03 though has found that the applicant's husband was suffering from Coronary Artery disease with severe LV dysfunction, percentage of which was found to be 20%, it was opined that such disablement was neither attributable to nor aggravated by military service. Hence the applicant's husband was not granted the disability element of the pension. The Review Medical Board in its proceeding dated 09.07.07 has found that the disability from which the applicant was suffering from, while was in service, was aggravated by military service, the applicant's husband having participated in 'Operation Parakram' w.e.f. 02.01.2001 to 14.11.2002. The Review Medical Board has also found that there was increase in the percentage of the disability from 20% to 40%.

8. It is an admitted position of fact that the applicant has been granted the disability element of the pension w.e.f. 09.07.2007 @40%. Attributability of the disability to military service having been found by the Review Medical Board, such attributability has to relate back to the date of discharge of the applicant's husband i.e. 01.11.03, when such disability was found. The applicant's husband, therefore, was entitled to disability element of the pension @20% w.e.f. 01.11.03 till 08.07.07 i.e. immediately preceding the date of granting the disability element of the pension @40%.

9. The applicant, who is present before this Tribunal has also stated that after release from the service on retirement, her husband was not keeping good health and had to be hospitalized on a number of occasions for his treatment, which was one of the reasons for not appearing before the Review Medical Board, though it was ordered sometimes in 2005. It has also been stated that the applicant's husband somehow could manage to appear before the Review Medical Board on 09.07.2007, wherein the percentage of disablement was found as 40%, which is aggravated by the service. The applicant has also stated that because of his on and off from the hospital, the applicant had to remain busy for treatment of her husband and in the process, they could not retain the copy of the applications filed seeking benefit of rounding off disability element.

10. The Hon'ble Supreme Court in ***Ram Avatar (Supra)*** having regard to the policy decision of the Govt. of India dated 31.01.2001, which provides for granting the benefit of broadbanning the disability element of the pension to the person who have invalidated out from service, has held that such benefit is also available to the persons who have retired from the service on attaining the age of superannuation. That being the position, the applicant's husband was also entitled to the benefit of the rounding off the disability element in terms of the policy decision of the Govt of India dated 31.01.2001.

11. Having regard to the aforesaid position and also the facts narrated above, we issue the following directions :-

(i) *To pay the disability element of the pension @ 20% to the applicant in respect of her husband for the period w.e.f. 01.11.2003 to 08.07.2007 with interest @ 9% per annum from aforesaid date i.e. 01.11.03 till the date of payment.*

(ii) *To round off the disability element of the pension to 50% w.e.f. 01.11.2003 till the date of death of the applicant's husband i.e. 27.09.2013, which amount shall carry interest @ 9% from the aforesaid date till the date of payment.*

*(iii) Arrear along with interest shall be paid to the applicant, since the applicant's husband, in the meantime, has expired, within a period of 04 months from the date of receipt of the copy of this order.*

12. OA is accordingly allowed.

13. No costs.

14. Mr. C. Baruah, learned CGSC has orally prayed for leave to appeal to the Hon'ble Supreme Court which, however, has been rejected as this order does not involve any point of law of general public importance.

**MEMBER (A)**

**MEMBER (J)**

*Kalita*