**BRIEF HEAD NOTES OF IMPORTANT JUDGMENTS/ORDER ALONG WITH PDF FILE FROM 2010 ONWARDS OF ARMED FORCES TRIBUNAL, REGIONAL BENCH,GUWAHATI**

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| **SUBJECT MATTER** | **SERIAL NO.** |
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1. **TA-40-2010 (N.K.SURESH PANDEY VS.UNION OF INDIA AND ORS DATE OF JUDGMENT 19.11.2010**

**Reduction in Rank and withholding of Salary –propriety of : (**Section 91(a) of Army Act 1950).

Punishment of 3 months rigorous imprisonment in military custody by Court Martial Proceeding on charges under Section 39(a),57(e) and 57(a) of Army Act, 1950.Reduction of petitioner’s rank from Naik to Sepoy –two punishments for same offence- legality challenged. Salary withhold for imprisonment period-propriety of.

**Held** : Reduction of rank is the statutory consequence of his undergoing imprisonment pursuant to Court Martial Proceedings by virtue of section 77 of Army Act,1050 and not in consequence of order of Court Martial- Salary is withhold for the period of imprisonment as per Section 91(a) of Army Act 1950.No illegality committed in reduction of rank and withholding salary. Application dismissed.



1. **TA 30/2010 (BIJOY BORO VS. UNION OF INDIA AND ORS.) DATE OF JUDGMENT 26.11.2010.**

**Discharge from service –** petitioner **,** a driver in Army discharged from service under Rule 13 of Army Rule 1954- petitioner earlier convicted on six occasions during 1993-2003 consequent to not agitating the legality of the said conviction, same attained finality –writ petition filed challenging the discharge order wherein legality of the earlier conviction challenged.

**Held** : Rule 13(3)(v) permits discharge of the delinquent on his earning 4 red ink entries or conviction. Hence, no illegality has committed in discharging the petitioner – petition dismissed.



1. **TA-24/2010 (SAMSUL HAQUE LASKAR VS.UNION OF INDIA AND ORS . DATE OF JUDGMENT 14.12.2010.**

**Dismissed from service by SCM- claimed disability pension sustainability.** (Rule 21 of Entitlement Rules & Regulation 173 of Pension Regulations).

**Held :** Invalidation from service is a condition precedent for grant of disability pension to any army personnel in view of Rule 21 of Entitlement Rules and has also to fulfill conditions prescribed under Regulation 173 of Pension Regulations for the Army- Petitioner was dismissed from service by SCM and not invalidated . Did not appear before the Medial Board for assessing his alleged disability- Petition dismissed with cost.

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1. **TA 31-2010 (MANUDHAR RAIGARH ( HAVALDAR) VS. UNION OF INDIA & ORS DATE OF JUDGMENT 16.12.2010**

**Dismissal from service by SCM –pleaded guilty of charges under Section 53(b) of Army Act. Challenged the Conviction and sentence on the plea of procedural lapse in conducting Summary Court Martial- discussed various law points.**

**Held :** There was no procedural lapse in conducting the SCM- petition not tenable dismissed.



1. Sec. 69 of Army Act, 1950, Sec. 354, 350 IPC

**District Court Martial- appellant found guilty under Sec. 69 of Army Act 1950 R/W Sec. 354 IPC, sentenced RI for one year and also dismissed from service-under challenge.**

Appellant committed offence of outraging modesty of wife of Sepoy Rajvir Singh. The evidence of PWs and DWs examined, findings of DCM perused. Decision in Cases of Vidyacharan Vs. State of Kerala (2004) 1 SCC 125. Rupan Deol Bajaj (Mrs) & Anr Vs. KPS Gill (1995) 6 SCC 194- referred.

**Held**-Ingredients of Sec. 354 IPC could show that an act of assault or criminal force with intention to outrage or likely to outrage modesty would attract 354 IPC. There was no grudge or enmity between accused and victim or her husband. Nothing elicited to create a doubt that they have falsely roped the accused. There is no reason to disbelieve testimony of victim which is corroborated on material aspects by witnesses. Findings of DCM upheld as it needs no interference. TA dismissed.



1. **TA-18/2010 (SRI SHIV MURATH SINGH YADAV VS. UOI & ORS) DATE OF JUDGMENT 03.06.2011.**

**Fair trial of the petitioner during SCM proceedings and dismissal from service were challenged** (Army Rule 115(2) & Section 14 of AFT Act, 2007).

**Held**- The proceedings of SCM were interpolated. Provisions of Army Rule 115(2) not complied with. A. defective certificate is sufficient to vitiate the proceedings. Tentative charge sheet not found in record. Irregularities in translation of summary evidence. Mandatory provisions of Rule 34 not complied with. Court or Tribunal can substitute its own punishment for cutting short of litigation. Section 14 of AFT Act, 2007 empowers Tribunal to substitute its own punishment.



1. **TA-49/2010 (RFN (TAILOR) BHUPAL RAM OKESA VS. UOI & ORS) DATE OF JUDGMENT DATED 24.06.2011.**

**Appellant declared deserter and dismissed from service by SCM proceedings-** **Propriety of**. Appellant submitted appeal. Appellant authority set aside SCM proceedings. Appellant rejoined. Again SCM proceedings were initiated and he was found guilty, punishment of dismissal from service was awarded. Impugned dismissal order from service was challenged as one could not be tried twice for same offence.

**Held-** Conviction and sentence inflicted is illegal and unsustainable, hence set aside and quashed. Reverting back of the appellant denied crossing the age of superannuation. As appellant rejoined service after quashing of first SCM, he deemed to continue in service till that date and entitled to usual service pension on completion of 15 years in the process.



1. **TA-02/2012 (RAKESH KUMAR GAUR VS. UOI & ORS) DATE OF JUDGMENT 24.01.2013.**

**Findings of the Summary Court Martial-( Assam Rifles)- dismissal from service- under challenge.** The applicant was dismissed from service after SCM having found the appellant guilty of charges. Dismissal order was interfered with by Gauhati High Court and Imposition of lesser punishment other than dismissal was recommended.

**Held**- Dismissal be converted to compulsory retirements as per Rule 11 (vii) of CCS (CCA) Rules. Director General of Assam Rifles has the authority to consider the same which is legally permissible. Also held that any other retiral benefit apart from pension be paid. Appeal disposed.



1. **TA-06/2012(RFN/ORL SRI AMAR NATH YADAV VS. UOI & ORS) DATE OF JUDGMENT 05.02.2013.**

**Findings of the Summary Court Martial - Charge sheet against the appellant and inflicting punishment of discharge from service propriety of**. Gross irregularities and illegalities in the SCM proceedings were contended by the appellant. Respondents contended that appellant was absent from service for more than 3 years as such dismissal justified.

**Held**- Irregularities in SCM proceedings is violation of Rule 115 of Army Rules. SCM proceedings did not follow Rule 34 of the Army Rules which is mandatory one. Deputy Judge Advocate General admitted irregularities in SCM proceedings not disputed by Respondents. SCM proceedings vitiated and hence set aside and quashed. Respondents to reinstate appellant in service. Appeal allowed.



1. **TA-01-2017 (AOO OA(A)-1486-2016) ( EX SEPOY KUMAR YADAV VS. OF INDIA AND OTHERS) DATE OF JUDGMENT 11.04.2018.**

**Findings of District Court Martial (DCM) found guilty under section 69 of Army Act,1950 read with section 354 IPC sentencing to undergo rigorous imprisonment and dismissal from service – under challenge.** The accused was charged for committing civil offence i.e. using criminal force to woman with intent to outrage her modesty.

**Held** : Ingredients of Section 354 IPC could show that an act of assault or criminal force with an intention to outrage or likely to outrage the modesty would attract section 354 IPC. Nothing has been elicited to create a doubt that they have falsely roped the accused. There is no reason to disbelieve the testimony of the victim which is corroborated on materials aspect by other witnesses, Findings of DCM uphold. TA dismissed.

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1. **OA 01-2011 (OINAM DOREN SINGH VS. UNION OF INDIA & ORS) DATE OF JUDGMENT 03.05.2011.**

**Dismissal from service by SCM on charges under section 354 IPC .**

**Held :** Not interfered with the findings and punishment awarded by the SCM- applicant was given liberty to file application u/S 179 of Army Act, for infliction of lesser punishment. Petition disposed of.



1. **OA-09/2012 (THAKARA RAM CHOUDHURY VS. UOI & ORS) DATE OF JUDGMENT 01.03.2012.**

**Discharge order issued by respondent authority transferring the appellant to Pension establishment and to carry out discharge drill - propriety of.** The seniority of the appellant was wrongly fixed. The respondents failed to set the matter right

**Held- A**ppellant’s junior was promoted for not fault of his due to negligence of the respondents. Set aside the discharge order directing the respondents to consider the appellant for promotion w.e.f. the date on which he became entitled as per his original seniority.



1. **OA-08/2011 (PREM BAHADUR THAPA VS. UOI & ANRS) DATE OF JUDGMENT 09.04.2012.**

**Validity of the conviction and sentence of dismissal from service upon holding a summary court martial on alleged admission of guilt**- **propriety of.**

**Held**- Found no charge of ‘desertion’ and the authority also having abandoned the allegation of ‘desertion’. Set aside and quashed the impugned SCM proceeding culminating dismissal order and quashed the impugned order of punishment – Entitled to the necessary retrial benefit including the pensionary benefit without any blemish.



1. **OA-25/2012 (EX CORPORAL ARVIND KUMAR VS.UNION OF INDIA AND ORS) DATE OF JUDGMENT 23.09.2013.**

**Findings and sentence of DCM rejecting the challenge made under section 161(2) of Air Force Act,1950 - under challenge.** The DCM held the accused appellant guilty of charge and imposed punishment of RI for 3 months and dismissal from service. Two witnesses were examined. Defence witnesses were examined by the accused.

**Held** – The award of lesser punishment would have met the ends of justice. Appellant was professionally very good. Behaviour impeccable. The sentence of reduction of rank would meet the ends of justice and accordingly set aside the sentence of RI and dismissal from service. Appeal partly allowed.



1. **OA 23/2012( SMT ANUPAMA SINHA VS. UNION OF INDIA AND OTHERS) DATE OF JUDGMENT 07.10.2013.**

**Impugned order of conviction and sentence on the husband of the appellant by SCM dismissing him from service has been challenged**. It was found that the husband of the appellant was suffering from mental ailment. He was tried for offence of desertion.

**Held**- None of the procedure prescribed were scrupulously followed. The accused voluntarily reported back duty, no charge of desertion be framed. Recording the ‘plea of guilty’ is a solemn act which was not done by SCM. SCM proceedings set aside and quashed. Order of appellate authority is also set aside and quashed. Respondents were directed to grant all consequential benefits to husband of the appellant deemed to be in service except back wages. OA allowed.



1. **OA-42/2012 (LT COL JYOTI PRASAD SAIKIA VS. UNION OF INDIA AND OTHERS) DATE OF JUDGMENT 25.11.2012.**

**Findings and sentence of GCM has been challenged**. The appellant, a Selection Grade Colonel of Indian Army, was found guilty of the charge, the punishment of severe reprimand was implicated. Pre-confirmation and Post -confirmation applications were rejected.

**Held**- The ratio of law in Apex Court case reported in (2010) 11 SCC 586 ( JS Sekhon Vs. UOI and anr )was taken into consideration. General Court Martial proceedings time barred by Section 122(1)(b) of Army Act, 1950 and hence set aside and quashed. Directed to remove/erase the comment. OA allowed.

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1. **OA-08/2014 (EX-SIGMAN SANJAY KUMAR VS. UOI & ORS) DATE OF JUDGMENT 01.10.2015.**

**Findings of General Court Martial proceedings -under challenge -** Appeal for setting aside/quashing the impugned proceeding of the GCM and sentence of imprisonment for life and dismissal from service by the GCM for committing civil offence causing death of his wife -with a prayer for reinstatement in service with all consequential benefits.

**Held-** The Tribunal opined that prosecution has proved the case and that the appellant alone had committed the alleged offence. The impugned sentence passed by the GCM does not suffer from any factual or legal infirmities and also stand to the reason. Appeal dismissed.



1. **OA-04/2014 ( EX RFN TOPHAN KUMAR MANGARAJ VS. UNION OF INDIA AND ORS ) DATE OF JUDGMENT 28.04.2016**.

**Findings of GCM holding applicant guilty of charge framed against him and imposition of sentence to suffer imprisonment for life and dismissal from service.** Theapplicant also challenged the order of Inspector General Assam Rifles (North) Shillong confirming the proceedings of GCM and sentence imposed upon him, The applicant prayed for acquittal and to reinstatement in service with consequential benefits.

**Held** : Prosecution failed to bring home the charge leveled against the applicant. Findings ,sentence and confirmation of finding and sentence set aside and applicant reinstated in service with all service benefits. OA allowed.



1. **OA(APPEAL) 29-2014 SRI SATISH KUMAR SHUKA VS. UNION OF INDIA AND ORS ) JUDGMENT DATD OF JUDGMENT 16.6.2016**.

**This is an appeal against the order of SCM dismissing the applicant from service on the basis of plea of guilty.**

**Held** : Statutory requirement of Rule 115(2) of the Army Rules 1954 has not been followed. Impugned order set aside. Appellant reinstated in service without back wages.



1. **OA-21/2012 (SRI OINAM DEOREN SINGH VS. UOI & ORS) DATE OF JUDGMENT 02.08.2012.**

**Order of dismissal from service for outraging modesty of a woman after Court Martial Proceedings which is contrary to section 354 IPC.- Propriety of.**

**Held**- Punishment of dismissal from service under section 69 of Army Act to the appellant who is a member of disciplined force need no interference. As per section 71 of the Army act punishment of dismissal is lesser punishment than imprisonment. Appeal dismissed.



1. CCS (Pension) Rules, 1972, FR 54(2)(3), 54(A),54(7) Article 311 of Constitution of India,

**SCM- challenged dismissal from service as discharge from service, grant of pensionary benefits.**

**Held**-impugned order dated 27.04.2014 substituting dismissal from service as discharge from service without initiating fresh proceeding set aside. Directed respondents to issue notice to the applicant proposing quantum of pay and allowances as per FR (54)(7) and sixty days notice to make representation which shall be disposed of by passing a speaking order. Applicant will receive existing pension as fixed till it is revised. OA allowed. Leave to appeal rejected.



1. Regulation 53 (b) of Pension Regulations for Army,2008.

CCS (Pension) Rules, 1972, FR 54(2)(3), 54(A),54(7) Article 311 of Constitution of India, **SCM- challenged dismissal from service as discharge from service, grant of pensionary benefits.**

**Held**-impugned order dated 27.04.2014 substituting dismissal from service as discharge from service without initiating fresh proceeding set aside. Directed respondents to issue notice to the applicant proposing quantum of pay and allowances as per FR (54)(7) and sixty days notice to make representation which shall be disposed of by passing a speaking order. Applicant will receive existing pension as fixed till it is revised. OA allowed. Leave to appeal rejected.



1. **Broad banding of disability pension sought for. Also under challenge discrimination between invalided out service and discharge from service.**

Applicant as discharged from service on completion of term of engagement and granted disability element of pension @60%. Respondents contended that the applicant not eligible for benefit of rounding off as he was discharged from service on completion of term of engagement and not discharged /invalided out of service before the term of engagement.

**Held –** since the applicant was discharged from service on 31.3.2009, Pension Regulations for the Army,2008 would apply. Regulation 53(b) of the said Regulations denies the benefit of rounding off who was charged on completion of term of engagement. The issue is no longer res integra in view of the decision of Kochi Bench of this Tribunal in Nb Sb Jadav Maruti Bhan passed in OA 93-2016. Also the decision of the Apex Court in case of UOI and Ors Vs Ram Avtar . In view of direction of the Hon’ble Apex Court, Government approved granting of the benefit of board banding on personnel discharged on completion of term of engagement, where disability is aggravated or attributable to military service. Central Govt. Policy decision does not make any differentiation between those who retired when Pension Regulation for the Army,1961 was in force and those who retired after coming into force of Pension Regulation for the Army 2008. Applicant is eligible for rounding of disability element of pension from the date of his discharge . The arrear would be restricted to 3 years with simple interest @ 9% PA on arrear to be paid within 6 months. OA is partly allowed. Leave to appeal rejected.

**(24)** Rule 13(3) III (V) of Army Rules, 1954. **Decision of PCDA (P) Allahabad dated 30.06.2016 rejecting disability pension challenged**.

-shelter appointment was declined by applicant and consequently discharged from service- propriety of. Release Medical Board found percentage of disability at 20% neither attributable to nor aggravated by military service. PCDA (P) rejected the claim of disability pension on 24.12.1987. The applicant did not file any appeal within time to PCDA (P).

**Held**- Govt. of India on 17.07.2016 took decision to entertain filing of such appeal within one year as one time relaxation measure. Applicant allowed to file first appeal and appellate authority to decide by speaking order within 3 months. OA disposed of.



**(25)Benefit of disability element of pension @20% and benefit of broad banding from 40% to 50% prayed for**. Review Medical Board assessed 40% disability aggravated by military service. Union of India & Ors Vs. Ram Avatar in Civil Appeal 418/2012 referred.

**Held**-as per decision of Govt. of India dated 31.01.2001 which provides for broadbanding of disability element of pension of persons invalided out of service and also available to persons retired from service on superannuation. Applicant’s husband is entitled to benefit of rounding off disability element of pension to 50% till the death of applicant’s husband with 9% interest per annum on the arrears within 4 months. OA allowed. Prayer for leave to appeal rejected. 

1. **Refusal to grant benefit of rounding off disability element of pension on the ground that the applicant was not invalided out from service-challenged**.

**Held**- since the applicant has not granted disability element of pension- question of rounding off does not arise. Directed respondents to treat the OA as first appeal and decide within 3 months by speaking order. OA disposed of.



**(27) Having discharged from service on own request on compassionate ground-not entitled to disability element of pension –challenged**.

-At the time of discharge disability was at 30% for life. Applicant filed representation to grant the benefit as per Central Govt decision dated 31.01.2001 which was rejected on the ground that he voluntarily retired prior to 01.01.2006.

**Held**-This Tribunal already set aside the cut-off date 01.01.2006 and decided entitlement of disability element of pension who retired prior to 01.01.2006. Impugned order set aside. Directed to grant 30% disability pension and rounding off the same to 50%.Case of Ram Avtar referred. OA allowed. Prayed for leave to appeal rejected.



(**28**)Rejection of rounding off disability element of pension on ground of having not invalided out of service but discharged on terms of engagement not entitled to same- propriety of.

**Held**-in view of ***decision of Hon’ble Supreme Court (Ram Avtar)-*** rounding off disability element of pension from 20% to 50% allowed to be paid within 3 months. Arrear would carry interest @9% per annum and to be paid within 4 months. OA allowed. Leave to appeal rejected.

**(29)Benefit of rounding off disability element of pension which has been denied on the ground of applicant having not been invalided out from service-has been challenged.**

The applicant submits that in view of decision of Hon’ble Supreme Court in Ram Avtar the impugned should be set aside and direction be issued for rounding off disability element of pension from 30% to 50% with interest.

**Held**- In view of aforesaid decision of Hon’ble Supreme Court in Ram Avtar, respondents are directed to grant the benefit of rounding off disability element of pension from 30% to 50% with arrear which would carry interest @9% per annum. OA allowed. Leave to appeal rejected.



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| **(30)** Section 14 of AFT Act, 2007, Army Rule 13(3)(iii)(v), 173,173(A) Pension Regulations for the Army, 1961.  **Disability element of pension as well as broad banding of the same-prayed for challenging decision of PCDA(P).**  -Applicant was invalided out from service on completion of term of engagement as low medical category (LMC) BEE (P). The Release Medical Board classified his disability ‘Abdominal Tuberculosis’ attributable to military service. Percentage of disablement assessed as 15-19% for two years and was released in LMC, BEE (P). His claim of disability pension rejected by PCDA (P) as disease not attributable to military service and disablement assessed below 20%. PCDA (P) however granted service element of disability pension Respondents stated that the applicant was discharged under Army Rule 13(3),(iii)(v) and hence his claim for disability pension was rejected by PCDA(P).  **Held-** AG’s Branch vide letter dated 25.04.2011 directed all commandants to withdraw from contesting court cases where findings of IMB/RMB has been altered by MAP in PCDA (P). Applicant’s case admittedly comes within the purview of the above letter. The applicant is entitled to disability pension @ 20% till 31.12.1995 which is rounded off upto 50% w.e.f. 01.01.1996 with arrear to be paid with simple interest @8% per annum. OA disposed of. |
| **(31**) Sec. 14 & 15 of AFT Act, 2007  **Rejection of disability pension by PCDA (P)-challenged**.  The applicant was discharged from service on LMC on 31.08.2002(S1H1P1P2EI). According to Release Medical Board hypertension is aggravated by military service while obesity neither attributable to nor aggravated by military service. The percentage of disablement noted as 30% for 2 years. Application for sheltered appointment was not recommended. Applicant forwarded claim for disability pension to PCDA (P). But PCDA (P) rejected the claim. The applicant preferred an application on 10.05.17 against rejection. But could not make further appeal.  **Held**-Denial of pension by MAP, PCDA (P) overruling Medical Board recommendation has been settled once for all in view of a catena of judgments in this regard. The applicant should have been called for Re-survey Medical Board after 2 years. Disability element of pension was incorrectly denied to him by PCDA (P). Applicant granted disability element of pension at 20% rounding off to 50% from the date of discharge with arrear within 3 months failing which simple interest @8% per annum. OA allowed. Leave to appeal rejected. |
| **(32)** Sec. 14 & 15 of AFT Act, 2007, Chapter VI & VII of Guide to Medical Officers (Military Pension) 2002, 173 & 173(A) of Pension Regulation of the Army, 1961.  **Denial of disability element of disability pension by PCDA (P) under challenge.**  -The applicant was declared 100% disabled due to “CORD COMPRESSION CV3-4 WITH POST TRAUMATIC QUARDIPLEGIA” and invalided out of service. He was granted service element of pension but denied disability element of disability pension by PCDA (P) as his disability neither attributable to nor aggravated by military service. First and second appeals were rejected as neither attributable to nor aggravated by military service. Treatment of the applicant could be ‘life *long’* and entitled for grant as per existing order. Invaliding Medical Board attributed the injury to service sustained while in military service. Applicant assailed rejection of second appeal and contended that injury being attributable to military service, no reason to deny disability element of pension @ 100%. Judgment passed by AFT, Kolkata Bench in OA-52 of 2015 referred besides Hon’ble Supreme Court Judgments.  Respondents argued that there is no cogent connection to the injury sustained by applicant although he was on casual leave which counts as on duty.  **Held**-Applicant invalided out from service after 11 years 11 months 6 days. The applicant is 100% disabled. Applicant allowed disability element of pension from the date of release from service as it was incorrectly denied by PCDA (P) despite recommendation of medical authorities. Applicant is entitled to constant Attendance Allowance with immediate effect. Arrear to be paid within 3 months failing which simple interest @ 8% per annum to be levied. OA is disposed of. Prayer for leave is rejected. |
| **(33**)Sec. 14 of AFT Act, 2007, Regulation of 173 of Pension Regulation for Army, 1961, Entitlement Rules for Casualty Pensionary awards 1982.  **Rejection of disability element of pension by PCDA (P), Allahabad under challenge**.  -The applicant enrolled on 13.01.1984 in Indian Army. In 2001 while serving in Jammu & Kashmir, he was diagnosed with “Myasthenia Gravis (Stage-II)”. He was discharged with 40% disability, as disease was aggravated by military service. Respondents stated that the disability pension was rejected by PCDA(P), Allahabad as the disability was neither attributable to nor aggravated by military service.  **Held**-. Onus of proof states that the claimant shall not be called upon to prove the conditions of entitlement. Further AG’s Branch already directed all commands to withdraw from contesting court cases where finding of IMB/RMB has been altered by MAP in PCDA (P). Applicant is entitled to disability pension taking his disability as 50% to be rounded off to 75% w.e.f. the date of retirement. Arrear to be paid in 3 months failing which simple interest @8% per annum to be levied. OA disposed of. Leave to appeal rejected. UOI & Anr Vs. Rajbir Singh, , 2015(2) SCC and Regulation 173 Para 16,17 of Pension Regulation for the Army, 1961 and. Entitlement Rules for Casualty Pension Awards 1982 (Para-9) referred. |
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| **(34**) Section 14 of AFT Act, 2007  **Grant of broad banding of disability pension prayed for**  Applicant was discharged from service in Low Medical Category. On discharge he was granted 30% war injury element of pension but rounding off benefit was not granted. Applicant is entitled to broad banding of disability element of pension from 30% to 50% as per decision in *Ram Avtar.*  **Held** – Respondents not refuted the documents connected with the application. It is not disputed that the applicant was discharged on completion of term of engagement in Low Medical Category with 30% disability as war injury. The issue of rounding off the benefit of disability of pension is no longer res-integra in view of *Ram Avatar (Supra)*. Respondents are directed to pay the benefit of broad banding from 30% to 50% within 4 months failing which interest on arrears @9% per annum. OA allowed. Leave to appeal rejected. |
| **(35)** Section 14 of the AFT Act, 2007.  **Grant of disability element of pension and broad banding of the same prayed for**.  The applicant was discharged from service in Low Medical Category-the invaliding disease declared as NANA. He served in both peace area and high altitude area for more than 20 years. Applicant disability was assessed at 40% for 2 years. PCDA(P) Allahabad intimated that applicant is not entitled to disability element of pension as disability was neither attributable nor aggravated by military service.  **Held**-Case is covered by decision of Dharamvir Singh and Full Bench of AFT, Principal Bench order dated 01.12.2017 in OA 1439 of 2016. Respondents are directed to grant disability pension broad banded from 40% to 50% with arrears for 3 years to be paid within 3 months failing which 9% interest per annum on the arrears. OA is allowed. Leave to appeal rejected. |

**(36)** Sec. 14 of the AFT Act, 2007, Regulation 179 of Pension Regulations for the Army 1961 Part-I

**Disability pension claimed**

Applicant discharged from service on Low Medical Category P3(P). Release Medical Board assessed disability @40% for life and declared as NANA. Respondents contended that petitioner was not entitled to disability pension under Regulation 179 of Pension Regulations for Army, 1961. The applicant was medically fit at the time of enrolment. The case is covered by the decision in Dharamvir Singh.

**Held**- issue of grant of broad banding of disability element of pension is no longer res-integra in view of decision in *Ram Avtar* and Full Bench of AFT, Principal Bench order dated 01.12.2017 in OA-1439 of 2016. Applicant is entitled to rounding off disability element of pension from 40% to 50% restricted to 3 years from the date of filing of the OA to be paid within 3 months failing which 9% interest per annum on the arrears. OA allowed. Leave to appeal rejected.



**(37) Grant of disability pension and broad banding -sought for.**

Release Medical Board and Re-survey Medical Board found disability @20% and attributable to military service. The applicant’s claim for disability pension was rejected by PCDA(P) on the ground that the disability was assessed below 20% by Re-assessment Medical Board. Re-survey Medical Board dated 19.11.1984 assessed disability @20% permanent attributable to military service.

**Held**- case is covered by decision in *Rajvir Singh* and *Full Bench of AFT, Principal Bench order dated 01.12.2017 in OA-1439 of 2016*. Respondents are directed to grant disability pension to the applicant @20% broad banding to 50% with arrears for 3 years to be paid within 4 months failing which 9% arrear per annum.OA allowed. Leave to appeal rejected.



**(38)** Rule 4 of Entitlement Rules for Casualty Pensionary Awards, 1982, Regulation 173 of Pension Regulations for the Army 1961.

**Denial of disability element of pension-challenged.**

Applicant was enrolled in Indian Army having found physically and mentally fit while in service. He was subsequently placed in permanent Low Medical Category H2(P) by Release Medical Board with 20% disability and discharged from service. He was denied disability element of pension on the ground that the disease “Sensori Neural Heading Loss” is NANA. The first and second appeals against rejection of disability pension were rejected. Entitlement Rules in Casualty Pensionary Invalidation from service is a necessary condition to grant disability pension as per Awards 1982. The applicant continued his service under shelter appointment and discharged from service on completion of term of engagement.

**Held**- In view of settled position of law, in Ram Avtar applicant is entitled to disability pension and benefit of broad banding of disability element of disability pension from 20% to 50% with arrears for 3 years to be paid within 3 months failing which interest @9% per annum. OA allowed.



(39) Rule 13(3) III (V) of Army Rules, 1954. **Decision of PCDA (P) Allahabad dated 30.06.2016 rejecting disability pension challenged**.

-shelter appointment was declined by applicant and consequently discharged from service- propriety of. Release Medical Board found percentage of disability at 20% neither attributable to nor aggravated by military service. PCDA (P) rejected the claim of disability pension on 24.12.1987. The applicant did not file any appeal within time to PCDA (P).

**Held**- Govt. of India on 17.07.2016 took decision to entertain filing of such appeal within one year as one time relaxation measure. Applicant allowed to file first appeal and appellate authority to decide by speaking order within 3 months. OA disposed of. 

**(40) OA-18-2017 ( SUB& HONY CAPT HB D DILTHU ANAL VS UNION OF INDIA AND OTHERS DATE OF JUDGMENT 20.04.2017**

**Rejection of the claim for grant of benefit of rounding off disability element of pension** on the ground that the applicant discharged from service on completion of term of engagement not entitled as per GOI decision dated 31.01.2001- propriety of.

**Held :** Tribunal directed to grant the benefit of rounding off the disability element of pension from 30% to 50% with arrear for a period of 3 years preceding the date of filing the representation.



**(41) OA-31/2016 ( EX HAV KAMKHOMANG VAIPHEI VS UNION OF INDIA AND ORS. DATE OF JUDGMENT 23.05.2017.**

**Broad banding disability element of pension under Regulation 53(b) of Pension Regulations for the Army 2008** has been sought for. Decision of Apex Court in Civil Appeal No. 418 of 2012 ( Union of India Vs Ram Avtar) referred.

**Held** : The applicant is entitled to the benefit of rounding off disability element of pension in accordance with law from the date of discharge. Arrear restricted to 3 years preceding the date of filing of OA. OA allowed.



**(42) OA-68-2016( EX NK T HAUPU ZOU VS. UNION OF INDIA & ORS DATED OF JUDGMENT 18.04.2017**

**Decision of respondents in not granting disability element of pension on the ground that PCDA(P) Allahabad has rejected the same-** propriety of

**Held** : There being no disputer to percentage of disablement found by Medical Board , the Tribunal set aside the action of the respondents in denying the benefit of disability element of pension and directed respondent authorities for payment with rounding off to 50% with arrear with 9% interest per annum. OA allowed.



**(43) OA-09-2016 SRI VAN LAL VENA VANCHHONG VS UNION OF INDIA AND ORS JUDGMENT DATED 07.06.2017**

**Claim of disability pension and service pension despite released from service on own request – propriety of**

**Held** : Applicant having not served 15 years not entitled to service pension under Pension Regulation for the Army, 1961. Applicant not entitled to relief claimed. Applicant may raise the issue before appropriate forum if already applied for re survey medical board within 10 years from date of discharge under Entitlement Rules for Casualty Pensionary Awards 1982.OA dismissed.

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**(44) TA 54-2010 (SMT VIZIEU KESIEZIE VS UNION OF INDIA AND ORS) DATE 31.3.2011.**

**Rejection of disability pension :** Invalided out of service in 1949 after 4 years of service. A World War II and Burma Veteran- invalided on injured conditions.

**Held :** Entitled to disability pension on assessment of disability at 20% from the date of discharge till day of demise. Benefits as admissible are to be paid to the widow of the deceased petitioner.



**(45) TA-04/2012 (SRI T. LALGINTHUOM GANGTE VS. UOI & ORS) DATE OF JUDGMENT 12.03.2013.**

**Disability Pension on medical ground - propriety of**.

Applicantwasinvaliding out from service on medical ground and refusal to grant disability pension . Alternatively to be reinstated in Service is prayed. Applicant suffering from Affective Psychosis (depression) with 80% disability as per Invaliding Medical Board. Disability did not exist before entry in service. He was discharged on medical ground mentioning fit for civil employment.

**Held-** Pension to Army personnel including disability pension are regulated by Pension Regulations for Army, 1961. Disease of affective psychosis with 80% disability arose out of stress and strain of military service. Impugned orders set aside and quashed. Applicant is entitled to disability pension with 10% interest to be paid within 2 months. Appeal stands allowed.



**(46) OA-13/2013(EX SEP KALPTHEANGA VS UNION OF INDIA & ORS) DATE OF JUDGMENT 03.09.2013.**

**Rejection of claim of disability pension for boarding out of service- under challenge**. Invaliding Medical Board recommended boarding out of service P-5(permanent) and opined that disability not connected with service with 100% disability and that injury sustained during annual leave. Appeal filed by the appellant rejected. Second appeal filed to Chief Commissioner was also disposed of. Breaking of continuous journey on way of leave station would disentitle the appellant of disability pension was raised by the Tribunal. Chapter IV of Pension Regulation was referred and Entitlement Rules for causality pensionary awards 1982 was referred.

**Held**- The respondents not justified in refusing disability pension with 100% disability while travelling on annual leave from duty station to leave station. Impugned decision and orders set aside and quashed. Respondents directed to pay disability pension with arrears and other benefits within 2 months failing which attract 10% interest PA. OA allowed.



**(47)** **OA-38-2016 ( BRIG NABHOJYOTI DEKA ( RETD) VS UNION OF INDIA AND ORS DATE OF JUDGMENT 09.11.2016**.

**Benefit of board banding of pension** – challenged the order of Sr. Accounts Officer (P) of PCDA(P) Allahabad rejecting the claim on the ground that since applicant has not invalided out from service but superannuated ,not entitled to said benefit – propriety of.

**Held** : Applicant for first time claimed the said benefit by representation dated 25.10.2016. Respondents directed to pay the benefit of rounding off from 50% to 75% with arrear for 3 years. The arrear would carry interest @ 9% per annum. OA allowed.



**(48) OA-51 of 2017**

(No.4338851 N Ex- Sep Thangzuala Lushai Vs. UOI & Ors)

**Army Rule 13(3)III(iii). Under Low Medical Category EEE(P). Invaliding Medical Board Proceedings (AFMSF-16). Re-Survey Medical Boards held. PCDA(P), Allahabad to reverse the opinion.**

Discontinuation of disability pension after paying to the applicant for nine years. The applicant was invalided out from service after rendering about 5 yrs on 15.09.1968 in Low Medical Category EEE(P) by the Invaliding Medical Board (AFMSF-16) proceeding dt 16.07.1968 for one year with 100% disability. Re-Survey Boards were held on 31.07.1969 and 08.06.1971.Then all of a sudden discontinued the disability pension consisting of disability element and service element to the applicant w.e.f.01.06.1979 as per assessment by the PCDA(P) Allahabad at less than 20%.. On being asked by the respondent authority he appeared before the Re-Survey Medical Board held in 151 Base Hospital and vide proceeding dated 27.10.1989 and he was again placed in the same medical category for further two years with 40% disability. But his disability pension claim which was sent to the PCDA(P) was returned on the plea that the disability pension had been discontinued w.e.f. 01.06.1979 and re-assessed his disability and turned down at 6/10% (less than 20%) for life without any explanation whatsoever.

**Held: In view of the catena of Judgments passed by the Hon”ble Apex Court regarding turning down of disability claim by PCDA(P) without explanation in Sukhvinder Singh v. UOI & Ors., Surmukh Singh Ex.Hav v.UOI, Mukhtiar Singh, Ex Hav v.UOI, and decision of the AFT,Kolkata in OA No. 105 of 2013 dt. 23.7.2014 in the case of Ex-Rect Khageswar Nayak vs.UIO and 5 Ors, the applicant is entitled to 40% disability element of rounded off to 50%. The respondents are directed to broadband the disability element of the pension of the applicant from 40% to 50% with arrears for a period of three years preceding the date of filing the OA i.e. 18.12.2017. The arrear be calculated and paid to the applicant within a period of three months from the date of receipt of a copy of this order. OA is disposed of. No costs.**



**(49) OA-31/2014(EX-HAV JHUNU KR DAS VS. UOI & ORS) DATE OF JUDGMENT 27.01.2016.**

**Refusal to grant disability pension – under challenge**. Applicant was detected Diabetic Mellitus Type II placed in Law Medical Category P2 (P) with 30% disability. Medical Board rejected disability pension on ground that disability neither attributable nor aggravated by military service.

**Held-** Principal Bench in OA 171/2014 decided Type 2 Diabetes Mellitus is aggravated by military service. The applicant served high altitude area. Para 26 of Ministry of Defence Guidelines stipulated Type 2 Diabetes Mellitus will be conceded aggravated. Applicant has been wrongly denied disability pension. Applicant entitled to 30% disability pension to be rounded off from 30% to 50% as per Govt of India decision dated 31.01.2001. with 12% interest pa. OA allowed.



**(50) OA-50 of 2017**

(No.4352495K Ex-Sep Chinkhan Khup Vs.UOI & Ors)

**Denial of disability element of pension to the applicant. Army Rule 13(3)(III)(v). Under Low Medical Category (LMC)BEE(P). PCDA(P), Allahabad. Rule 4 (a)of the Entitlement Rules, 2008. Rule 4(a) for Casualty Pensionary Awards.**

Denial of disability element of pension to the applicant. The applicant discharged from the Indian Army on 26.02.1987 under Army Rule 13(3)(III)(v) before completion of term of his engagement under Low Medical Category (LMC)BEE(P) vide Release Medical Board Proceedings (AFMS 16) dt.10.12.1986. His percentage of disability was found at 15-19% While reassessing the applicant’s disability as 11-14%(below 20%) PCDA(P) Allahabad rejected his claim but granted service element pension for life. He was not called for by the Re-survey Medical Board on completion of 2 years then the applicant applied for granting him disability pension with rounding off benefit to The Records, Assam Regiment for award but he was denied as percentage of disability was assessed by PCDA(P), Allahabad in reducing to *11-14%* which was already 15-19% without examining the applicant and he was invalided out of service with disability of below 20% which proves its arbitrariness on the part of the Defence Accounts Officials. In OA 63 of 2016, this Bench vide order dated 29.11.2016 had directed the applicant to file an application which he did on 07.12.2016 but no response has been received.

**Held: In view of the decisions of the Hon’ble Supreme Court in Dharamvir Singh vs. UOI and Sukhvinder Singh vs.UOI it is to be assumed that the applicant’s disability should have been assessed as above 20%. Therefore, as per existing policy, the disability leading to invaliding out of service attracts the grant of 50% disability pension from 20% disability,the applicant is entitled to disability pension from the date of his invaliding out of service i.e. 26.02.1987 up to 31.12.1995 @ 20% and from 01.01.1996 onwards the disability has to be rounded off to 50% in conformity with existing policy. The arrear be calculated and paid to the applicant within a period of three months from the date of receipt of its copy failing which 8% interest per annum will be levied on the arrears.**

**Disposed of. No costs.**

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**(51) OA-17 of 2018**

(No.13670278W Ex-NK(TS) Zamtung Nung Vs.UOI & Ors.)

The applicant was discharged from service on 01.02.1988 after completion of his term of engagement for 15 years in Low Medical Category CEE(P) by the Release Medical Board held on 12.05.1987 with degree of disability at 20% which was noted as aggravated due to military service. He was granted disability pension for two years i.e. w.e.f. 01.02.1988 to 11.12.1989 thereafter, it was stopped though The Re-Survey Medical Board held at 151 Base Hospital on 23.05 1989 found that applicant’s disability persists and degree of disability assessed at 20% permanent for life but the payment of disability element of pension has been discontinued as the PCDA(P) did not agree with the opinion of the Re-Survey Medical Board.. Therefore, applicant prayed for continuous disability element of pension 20% permanent for life and rounding off benefit.

**HELD: PCDA(P) has no authority to disagree with the opinion of the Re-Survey Medical Board held on 23.05.1987 regarding percentage of disability without any physical examination of the applicant. In view of the decisions of the Hon’ble Apex Court in UOI & Ors. Vs. Ram Avatar and also Kolkata Bench Bench of AFT in Debashish Ghosh vs.UOI and Ex-Rect Khageswar Nayak vs. UOI & Ors, the impugned order passed by the PCDA(P) is to be set aside. The applicant who has been discharged from service on completion of his term of engagement is entitled to the benefit of rounding off disability pension and also the benefit of broad banding.**

**OA is allowed with a direction to the respondents to grant disability element of pension to the applicant @ 20% with rounding off benefit i.e. 20% to 50% with arrear** **for a period of three years preceding the date of filing of the earlier OA-76 of 2016 dated 28.12.2016. The arrear would carry interest @ 9% per annum from the said date till the date of payment. No costs**



**(52) OA -10 of 2018**

(No.JC-374119X EX-Sub Dhaneswar Saikia vs.UOI & Ors.)

**Element of disability pension. Release Medical Board held on 02.06.2011. Disablement noted** **as 20%. Disability due to violence/attacks by terrorists, anti social elements. Appendix II Regulations 48 , 173 and 185 of the Pension Regulations for the Army, 1961.**

Ref: Jitendra Kumar vs.Chief of Army Staff and Ors., Harbans Singh v.UOI, of Delhi High Court, Joginder Singh v.Union of India 1996(2)SLR149, Union of India and Anr.v.Baljit Singh 1997(1) SLR 98, Madan Singh Shekhawat vs. Union of India and Ors., Yadvinder Singh Virk v. Union of India & Ors. In Civil Writ Petition No. 6066 of 2007 (2009 SCC), Ex Nayik IKishan Singh v.Union of India, 2008(3) SLR 327, General Manager, B.E.S.T. Undertaking, Bombay v. Mrs Agnes of the Hon’ble Apex Court.

The applicant was enrolled in the Signal Regiment on 19.061982, in due course promoted to the rank of Subedar. While he was at native village on annual leave w.e.f.02.01.2009 to 06.03.2009, some anti social element attacked him with a sharp weapon causing grievous injury to his hand. A police case was registered being Pulibor PS Case No.13/2009 u/s 387/326 IPC. When the applicant was discharged from service on completion of his term of engagement, the Release Medical Board held on 02.06.2011 approved his disability as 20% but the injury was classified as neither attributable nor aggravated by military service. Therefore, his appeal for disability pension was rejected by the Records Signals vide letter dated 15.03.2012 as per Regulation 179 of the Pension Regulations for Army, Part-I, 1961. But he could not prefer an appeal before the Appellate Committee as he was not provided with the copy of the Release Medical Board proceeding.

**Held: In view of the settled Law by the Apex Court, a person on casual/annual leave is deemed to be on duty and there must be apparent nexus between normal living of person subject to military law while on leave and injuries suffered by him. The petitioner sustained injury/disability during his service engagement although being on annual leave, and the disability would be deemed to be attributable and aggravated by military service. The injury sustained by the applicant falls well within the category ‘D’ of Govt. of India (MoD) letter dt. 31.01.2001. The applicant should be considered to be as on duty at the relevant time and the injury sustained by him has to be treated as attributable to military service. The respondent authority is directed to grant disability petition @20% to be rounded off to 50% with arrears for a period of three years prior to filing of this OA i.e3. 11.04.2018. Arrears to be calculated and paid to the applicant within a period of 3 months from the date of receipt of this order, failing which 8% simple interest will be levied on the arrears.**

**OA is allowed. No costs.**



**(53) OA-19 of 2018**

No.4353015F Ex-Honorary Naib Subedar Bhairab Ch Basumatary vs. UOI & Ors.)

**Claiming pension as applicable to Honorary rank of Naib Subedar pursuant to the policy letter of the Government of India, Ministry of Defence (Dept. of Ex-Servicemen Welfare) vide letter dt.312.06.2009.**

**Ref:Virender Singh & Ors vs.UOI & Ors), Union of India & Ors. Subhash Ch Soni in Civil Appeal No. 4677 of 2014**

The applicant was discharged from service on 31.07.2004 after rendering 24 years of service. On Independence day, 2004, he was conferred Honorary rank of Naib Subedar. As the applicant was receiving pension in the rank of Havildar, he thereafter claimed pension for Honorary rank of Naib Subedar w.e.f. 01.01.2006 in view of the policy letter dated 12.06.2009 issued by the Government of India, Ministry of Defence which authorises pension payable to all Honorary Naib Subedar w.e.f. 01.01.2006 but claim was rejected. The Kochi Bench of AFT had granted relief to similarly situated another applicant in OA-13 of 2018..

**Held: In view of the approval of the Government of India, (Department of Ex-Servicemen Welfare) vide letter No.1(8)/2008-D (Pen/Policy) dt. 12.06.2009 the applicant is entitled to receive pension as applicable to Honorary Naib Subedar w.e.f. 01.01.2006. The pension has to be revised on that basis which should be done by the respondents and arrears of pension be paid to him within a period of three months from the date of receipt of a copy of the order failing which the applicant would be entitled to simple interest @ 8% per annum in the arrears payable till realization.**

**OA is allowed. No costs.**

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**(54) OA-01 of 2018**

(DS 11994M Lt.Col.T.Moaba Amer (Retd.)vs.UOI & Ors.)

**Denial of Element of disability pension. Low Medical Category S1H1A1P2E1 Release Medical Board Proceeding. 20% disability for life.**

The applicant was commissioned in the Army Dental Corps on 04.03.1999 and was discharged from service on 03.03.2013 on completion of terms of engagement in the Low Medical Category S1H1A1P2E1 which was noted as aggravated by medical service with 20% disability for life by the Release Medical Board. But he was not granted any disability element of pension then he preferred applications before the 1st Appellate and 2nd Appellate Commissions respectively. Both the Commissions rejected his claim. The RMB clearly stated that the disability of the applicant has been aggravated by military service and was due to physical and mental stress & strain of service. The Second Appellate Committee has not considered the opinion of Release Medical Board and simply rejected the claim of the applicant.

**HELD: The applicant is entitled to disability element of pension @ 20% which has to be rounded off to 50% from the date of his discharge from service i.e. 03.03.2013. Respondents are directed to grant the disability element of pension to the applicant rounded off from 20% to 50% with arrears. The arrears shall be paid within a period of three months from the date of receipt of copy of this order failing which the applicant would be entitled to simple interest @8% per annum on the arrears payable till realization.**

**OA is disposed of. No costs.**

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**(55) OA-49 of 2017**

(No.4360442A Ex Nk Lalengvel Darngawn Vs.UOI & Ors)

**Pension Regulations for the Army, 1961. Army Regulations 173 (Parameterial), Entitlement Rules for Casualty Pensionary Awards 1982 Appendix II to the Pension Regulations. Rules 5, 9 and 14 of the Entitlement Rules for Casualty Pensionary Awards, 1982. Regulation 178 and 179 of the Pension Regulations for the Army, Part-I, 1961.**

The applicant was diagnosed with “Diabetes Mellitus Type-II” and on assessing the degree of his disability @ 20% for life by the Release Medical Board, he was discharged from Service on completion of his term of engagement on 01.11. 2010 in Low Medical Category P3(P). On his retirement, he had applied for disability pension before the concerned authority, which was turned down on the ground that his disease was neither attributable to nor aggravated by the Military Service and the percentage of disability was assessed as “Nil” though, the percentage of disablement was assessed at 20% for life.

**Held: In view of the decision in UOI vs Rajvir Singh (supra) of Hon’ble Apex Court, the applicant shall be entitled for disability pension Since the applicant was discharged from service on 01.11.2010, Regulation 173(Paramaterial) Appendix 2 of the Entitlement Rules for Casualty Pensionary Awards 1982 Rules 5 and 9, the Pension Regulations for the Army 1961 would apply. Nothing has been brought on record to indicate that the applicant was suffering from disease in question at the time of entry into the service i.e. on 12.10.1988.Only in the event of completion of his terms of engagement, he was found in Low Medical Category P3(P). Therefore,the applicant is entitled to get the benefit of 20% disability pension rounded off to 50% w.e.f. three years prior to filing of the appeal i.e. 16.11.2017 for life. Arrears will be paid within a period of 3 months from the date of receipt of this order, failing which a simple interest of 8% will be levied on the arrears. No cost. OA is allowed and disposed of.**



**(56) OA-27/2014 (SMT MAMATA SHARMA VS. UOI & ORS) DATE OF JUDGMENT 18.09.2015.**

**Grant of Special Family Pension** - The applicant prayed for Special Family Pension and ex-gratia on the heath of her husband due to motor cycle accident challenging the action of the competent authority for not granting Special Family Pension. PCDA(P) issued PPO for Ordinary Family Pension. Regulations 82(c),84 and 105 of Pension Regulations of the Army Part-I deals with special family pension. COI held that death is attributable to military service and only shortfall mentioned in COI is that death could be avoided had the applicant interlocked his helmet.

**Held**- PCDA(A) was not authorized to issue PPO for Ordinary Family Pension and exceeded his authority. Non payment of ex gratia is also unsustainable. Impugned order issued by PCDA(P) Allahabad set aside and quashed. Directed to pay special family pension as well as exgratia lump sum compensation of Rs.5.00 lakhs along with 9% interest pa. OA allowed.



**(57) OA-01/2015 (SMTI BISHNU KUMARI KC VS. UOI & ORS) DATE OF JUDGMENT 01.10.2015.**

**Declaring deemed dead -** Application filed for declaring the husband of the applicant as deemed dead and grant of balance salary and other retiral benefits and family pension. The husband of the applicant declared deserter.

**Held**- Husband of the applicant declared deserter in a hasty manner without application of mind. Presumption of death of the husband of the applicant was kept pending by the authority. Govt. Circular No.12(16)/86/D (Pen/Sers) dated 03.06.1998 deals with procedure for presumption of death. Impugned order of deserter set aside and quashed. Respondents to declare the applicant’s husband as deemed dead and to pay all arrears within 3 months along with 8% interest pa failing which 12% interest per annum. OA allowed.

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**(58) TA NO. 25/2010 (SRI GAJENDRA CHANDRA RAY –VS- UNION OF INDIA & ORS). DATE OF JUDGMENT 25.05.2011.**

**Action of the respondents to deny service pension falling short of required length of service was challenged**. Minimum 15 years of service as per Clause **155** of Pension Regulations for Army, 1961 required for pension.

**Held-** Petitioner is not entitled to the pensionary benefit under Pension Regulations. Examples of 3 personnel allegedly granted pension though not completed 15 years could not be established. Petitioner did not challenge his plural marriage before appropriate judicial authority. Appeal dismissed.



**(59) TA-53/2010 (SMTI BISHNU MAYA GURUNG VS. UOI & ORS) DATE OF JUDGMENT 09.06.2011.**

**Husband of the petitioner was declared deserter and dismissed from service**. Tracing out of Husband and payment of monthly pension and other benefits in the event of failure to trace out along with arrear and compensation were prayed for.

**Held-** Husband of the petitioner still surviving. Prayer for tracing out rejected. Petitioner has not challenged legality and validity of dismissal on desertion and hence pension and other claims rejected**.** Appeal dismissed.



**(60)TA-59/2010 (SMTI EMAKALITA MOMIN AND ANR VS. UOI & ORS,) DATE OF JUDGMENT 26.07.2011.**

**Refusal to grant family pension in favour of mother and daughter** **was challenged.** Reason for refusal to was that Respondent No.5 Smti Bila Marak was legally wedded wife of deceased husband. As per customary laws of Garos of Meghalaya to which the parries belong even existence of earlier marriage a person is legally entitled to enter in second marriage. But Society must accept such marriage in absence of which it is void. Respondents maintained that the authority acted rightly in rejecting the claim of appellant No.2.

**Held-** Marriage of appellant No.1 was solemnized after retirement of her husband P.Marak and appellant No.2 was born from appellant No.1. Paternity not disputed. Apex Court judgment reported in AIR 1989 SC 2088,AIR 1983 SC 130,AIR 1985 SC 1196 were referred. Children born out of marriage contacted by Govt. Servant after retirement are entitled to pensionary benefit. Appellant No.2 entitled to 50% of family pension. Appellant No.1 should establish her marriage as legal by getting declaration from appropriate forum. Appeal allowed.



1. **TA-18/2011 (SMTI DOLLY LASKAR (BHOWMIK) VS. UOI & ORS) DATE OF JUDGMENT 03.04.2012.**

**Claim of family pension from the parent department of her husband despite getting pension from another source- propriety of.**

**Held-** No illegality in not granting family pension by the parent department of her husband as the appellant is already getting pension from the Fire Service Dept of the Govt of Tripura. Appeal dismissed.



1. **TA-04/2010 (BRIG. D.A.CHANRASARKAR ( RETD) VS UNION INDIA AND ORS. - DATE OF JUDGMENT 13.10.2010.**

**Suspension of pension :** (Regulation 5(b)(v) of Pension Regulations for Army).

Criminal proceedings initiated after 4 years of retirement as Brigadier for criminal conspiracy and cheating during service period. Special Judge, CBI convicted the petitioner. Appeal against conviction pending-petitioner’s pension suspended with immediate effect under Regulation 5(b)(v) of Pension Regulation for Army.

**Held** :Pension payment purely discretion of Respondents during pendency of criminal proceedings. Application dismissed.



1. **OA-73-2016 (SMT RANU GOGOI VS. UOI AND OTHERS ) JUDGMENT DATED 27.06.2017.**

**Service pension to the husband of the applicant and family pension to applicant propriety of.** The applicant’s husband sought discharge from service on extreme compassionate grounds. He left the Unit without leave/authority. He eventually declared deserter and dismissed from service**.**

**Held**: The applicant is eligible for family pension. Respondents directed to pay family pension with arrears and interest. Applicant’s husband Not eligible for pay and allowances from the date of absence from the Unit without leave till his death based on the principle of “No work no pay.”



1. **OA- 30 of 2017**

(Smti Sarmistha Sharma Vs.UOI & Ors)

**Refusal to release family pension to the applicant, widow of an ex-serviceman (Indian Navy) due to some discrepancies.**

The husband of the applicant an Indian Navy personnel was drawing his regular pension w.e.f. 02.08.1983 on completion of his full term of engagement w.e.f. 13.07.1968. On his death on 08.08.2012, his wife, the applicant Smti Sarmistha Sharma had applied for family pension to the OIC, Bureau of Sailors, Cheetah Canp, Mankhrud, Mumbai through Zilla Sainik Board. The Naval Pension office noted the name of the applicant, wife of the deceased ex-serviceman as “Gayatri Sharma” and not “Sarmistha Sharma” though actual name of the applicant was Sarmistha Sharma. The applicant clarified that Gayatri Sharma was her nick name and then she placed her redresses before the Defence Pension Adalat held on 17.10.2014. The Adalat after examining the case and obtaining proper authentication from the Deputy Commissioner, East Khasi Hills District, Meghalaya certified that the applicant is genuine legal widow of Late Nanda Gopal Sharma. She had executed a personal Indemnity Bond dt. 08.06,.2018 to that effect.

**Held: There is no doubt that “Gayatri Sharma” and “Sarmistha Sharma” are one and the same person.**

**Respondents are directed to release the family pension to the applicant along with arrears from the date from which it was due to her. The order should be complied with within a period of two months from the date of its receipt, failing which an interest @8% p.a. will be levied on the arrears. OA allowed.**

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1. **Army Act Sec. 106, Army Rule 183, Regulation 113(a) of Pension Regulations for the Army, 1961, revised Regulation 41(a) of the Pension Regulations for the Army 2008- Service pension to the husband of the applicant and family pension to applicant and family pension to applicant propriety of.** The applicant’s husband sought discharge from service on extreme compassionate grounds. He left the Unit without leave/authority. He eventually declared deserter and dismissed from service**.**

**Held**: The applicant is eligible for family pension. Respondents directed to pay family pension with arrears and interest. Applicant’s husband Not eligible for pay and allowances from the date of absence from the Unit without leave till his death based on the principle of “No work no pay.”



1. **Refusal to grant of special compensatory (counter insurgency) allowance while posting to Border Roads Organization (BRO) -under challenge.**

Applicant submits issue no longer res-integra as decided by AFT, Chandigarh Bench in OA -144/2011 dated 19.04.2011.

Respondents submitted issue for payment of special Compensatory Allowance already decided by AFT, Chandigarh Bench and affirmed by the Hon’ble Supreme Court.

**Held**-Respondents directed to pay Special Compensatory (Counter Insurgency) allowance subject to verification whether applicant posted to counter insurgency area, within 4 months failing which the amount will carry 12% interest per annum. Amount if already paid and recovered shall be refunded to the applicant. OA allowed.



1. **Refusal to grant of special compensatory (counter insurgency) allowance while posting to Border Roads Organization (BRO) under challenge**.

Applicant submits issue no longer res-integra as decided by AFT, Chandigarh Bench in OA-144/2011 dated 19.04.2011.

Respondents submitted issue for payment of special Compensatory Allowance already decided by AFT, Chandigarh Bench and affirmed by the Hon’ble Supreme Court.

**Held**-Respondents directed to pay Special Compensatory (Counter Insurgency) allowance subject to verification whether applicant posted to counter insurgency area, within 4 months failing which the amount will carry 12% interest per annum. Amount if already paid and recovered shall be refunded to the applicant. OA allowed.



1. **Grant of Special Compensatory (Counter Insurgency) Allowance-prayed for.**

The applicant was refused Special Compensatory (Counter Insurgency) Allowance while he was posted in Border Roads Organization (BRO).

**Held**- Issue of payment of Special Compensatory (Counter Insurgency) Allowance is no longer res-integra as decided by AFT, Chandigarh Bench in OA-144/2011 (Brig A.K. Bhutani and Ors Vs. UOI & Ors) upheld by Hon’ble Supreme Court. Respondents directed to pay Special Compensatory Allowance subject to verification as to whether the applicant was posted in Counter Insurgency area within 4 months. Amount earlier paid and recovered from the applicant shall be refunded. OA allowed.



1. **Refusal to grant of special compensatory (counter insurgency) allowance while posting to Border Roads Organization (BRO)- under challenge**.

Applicant submits issue no longer res-integra as decided by AFT, Chandigarh Bench in OA -144/2011 dated 19.04.2011.

Respondents submitted issue for payment of special Compensatory Allowance already decided by AFT, Chandigarh Bench and affirmed by the Hon’ble Supreme Court.

**Held**-respondents directed to pay Special Compensatory (Counter Insurgency) allowance subject to verification whether applicant posted to counter insurgency area, within 4 months failing which the amount will carry 12% interest per annum. Amount if already paid and recovered shall be refunded to the applicant. OA allowed.



1. **Refusal to grant of special compensatory (counter insurgency) allowance while posting to Border Roads Organization (BRO) under challenge.**

Applicant submits issue no longer res-integra as decided by AFT, Chandigarh Bench in OA-144/2011 dated 19.04.2011.

Respondents submitted issue for payment of special Compensatory Allowance already decided by AFT, Chandigarh Bench and affirmed by the Hon’ble Supreme Court.

**Held**-Respondents directed to pay Special Compensatory (Counter Insurgency) allowance subject to verification whether applicant posted to counter insurgency area, within 4 months failing which the amount will carry 12% interest per annum. Amount if already paid and recovered shall be refunded to the applicant. OA allowed.



1. **TA-58/2010 (PANGYANGLIBA VS. UNION OF INDIA & ORS )DATE 23.02.2011**

**Denial of Payment of Ex Gratia compensation –** petitioner’s son died due to head injury while participating in a boxing competition on behalf of his Battalion Attributable to military service petitioner claim ex gratia compensation.

**Held :** Petitioner’s son died while due to accident while on duty and is entitled to ex gratia compensation of Rs. 10 lacs pursuant to the letter dated 3.11.2009 and 22.9.1998.



1. **TA-04/2011 (MISS T.S. MAMI ANAL VS. UOI & ORS) DATE OF JUDGMENT 31.10.2011.**

**Denial of the petitioner grant of ex-gratia and Second Life Award (Liberalized Family Pension)** –**propriety of**. The brother of the petitioner sacrificed his life in Jammu and Kashmir operation in 1993. After his death Rs.50,000.00 was awarded to father of the deceased. Amount not received by father who expired. Mother predeceased his father. Second eldest sister applied for Second Life Pension. But same not granted. Petitioner contended to grant her Rs.1.00 as second life award as per benefit package for martyrs family under Operation Vijay ( Kargil).

**Held**- Petitioner not entitled to grants under Army Central Welfare Fund and National Defence Fund as both the grants cannot be passed down beyond the nominated next to kin. Respondents to pass a reasoned order reconsidering the entitlement of the petitioner to Second Life Award of special family pension as per Govt. of India order dated 31.01.2001. Set aside PCDA (A) order rejecting second life award. Petition allowed.



1. **OA-24/2017 COL A.K.GUPTA VS UNION OF INDIA AND OTHERS DATE OF JUDGMENT 07.06.2017**

**Prayer for direction to pay Special Compensatory (Counter Insurgency) Allowance.**  The applicant was posted to Border Roads Organization (BRO). The issue of Special Compensatory (Counter Insurgency) Allowance is no longer res integra as decided by Chandigarh Bench, AFT and Hon’ble Apex Court.

**Held**: Tribunal directed to pay Special Compensatory (Counter Insurgency) Allowance to the applicant subject to verification as to whether the applicant was posted in the counter insurgency Operation area, if so, the period thereof. OA allowed to the extent indicated.



1. **OA-53 of 2017**

(No.701890-N Sergeant Samar Krishna Acharjee Vs.UOI & Ors)

**Low Medical Category (LMC) A4G4(T-24). Denial of extension of service for fourth spell by Medical Condonation Board No. 01/2017 Para 4(e)(iii) of AFO 21/2014 to the applicant**.

After expiry of the initial term of engagement on 28.02.2006, the applicant had applied for extension of his service. His prayer for extension of service for two first two spells i.e. from 01.03.2006 to 28..02.2012 and 01.03.2012 to 28.02.2015 were considered and granted. Although, he was found in Low Medical Category (LMC) A4G4(T-24),his prayer for extension of service for third spell w.e.f.01.03.2015 to 28.02.2018 was also granted by Medical Condonation Board as per Clause 4(e) of AFO 16.2010. But his prayer for fourth spell of extension of service (w.e.f.01.03.2018 to 28.02.2021) was not allowed as the applicant was found unfit for further extension of service in terms of Para 4(e)(iii) of AFO 21/2014 by the competent authority. The applicant sought for the detailed executive Report which was denied in view of Section 8(1)(e) of the RTI Act.

**Held: In view of the settled law, extension of service is not a matter of right but is a matter of discretion of the department and as the applicant has neither challenged the findings of Medical Condonation Board nor applied for re-consideration of grant of extension on any up-gradation of medical category, the OA stands dismissed. No costs.**



1. **TA 27-2010 (EX MAJOR PRASANTA KUMAR SINHA VS UNION OF INDIA & ORS) DATE OF JUDGMENT 24.12.2010**

**Non consideration of ex serviceman pursuant Rule 2 of Army Act 1950 resulting deprivation from all benefits of ex serviceman -propriety of -**

**Held** : Petitioner was duly released from service on premature retirement and is thus an ex serviceman – no rule/order denies the petitioner the other normal benefits as admissible to an ex servicemen- except for the purpose for which the status has specifically excluded as re-employment. Respondents directed to issue comprehensive definition of se servicemen. Petition allowed.



1. **TA-35/2010 (LT. COL SATYANARAYAN RAY VS. UOI & ORS) DATE OF JUDGMENT 25.07.2011.**

**Promotional matter to the rank of Colonel – propriety of .**The basic thrust of appellant was that decision of the Chief of the Army Staff setting aside punishment of reprimand was not placed before the Promotion Board.

**Held**- Appellant’s case was examined and dealt with as per existing policy in force. No error in decision making process was found. Decision of Hon’ble Supreme Court in Surinder Sukla Vs UOI and Ors squarely applied. Appeal dismissed.

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1. **TA-55/2010 (NK/CLK (GD) DINESH KR SHUKLA VS. UOI & ORS.( DATE OF JUDGMENT 02.12.2011.)**

**Alleged discrimination and arbitrariness in not promoting the petitioner from Naik to Havildar on the basis of run test**- **propriety of.**

**Held –** Petitioner having finally passed the test must be considered -entitled to promotion to the rank of Havildar.



1. **TA-02-2016( LT COL AV SALLY VS. UNION OF INDIA AND OTHERS) JUDGMENT DATED 27.06.2017**

**Appeal against adverse Report in CR/ACR.** Respondents received a number of oral complaints from officer and staff of the Unit against the applicant on his behavior, no improvement on his performance due to lack of professional competence. Applicant contended CR by Respondent No.4 was not keeping with his overall profile.

Held : Tribunal directed respondents 1 and 2 to take de novo look at the CR of the applicant for the relevant period taking into consideration overall profile and performance of the Officer and observations made by the Tribunal in the order. TA Disposed of.



1. **OA-01/2012 (COL (TS) P.D. POONEKAR VS. UOI & ANRS, DATE OF JUDGMENT 11.04.2012)**

**Refusal to release pay and allowances for the extended period of 12 months` study leave to complete higher studies abroad propriety of.**

**Held-** Grave injustice to deny the appellant his pay and allowances for the extended period of study –directed to release the pay and allowances in respect of the extended period of study for 12 months forthwith.



1. **OA-02/2012 (BRIG SHAMMI SABHARWAR VS UOI & ORS) DATE OF JUDGMENT 18.10.2012.**

**Order of Censure and rejection of the statutory appeal was challenged**.

**Held**- The applicant was given full opportunity to defend himself during the course of inquiry but failed to justify his plea. Finding arrived at in the COI is based on materials on record as per Chapter 6 of the Rules including Army Rules 180. No irregularities/illegality found in the procedure adopted Application dismissed.



1. **OA-21/2013 (EX-SIGMN NEPAL SANKAR ROY VS. UOI & ORS) DATE OF JUDGMENT 26.06.2013**

**Condonation of shortfall in service to get service pension- propriety of**  Order of Chief Record Officer rejecting condonation of shortfall in service to get service pension was challenged. As per Para 125 of Pension Regulations for Army 1961, delay for more than one year cannot be condoned. Applicant had shortfall of one year and 336 days. Further applicant was discharged from service at his own request.

**Held-** No infirmity in the impugned order. Application dismissed.



1. **OA-20/2013 (CAPT DIBAKAR CHANDRA VS. UNION OF INDIA & ORS.) DATE OF JUDGMENT 23.09.2013**

**Censure order of severe displeasure (Recordable) has been challenged**. The applicant was a Short Service Commission Officer. The appellant was ordered to be released at the end of the term. Aggrieved he filed OA-18/2012 which was disposed of on 19.09.2012.

**Held :** The remarks made by Selection Board held factually incorrect as no disciplinary case pending against the appellant. The letter of displeasure as also finding of No. 5 Selection Board were set aside by the Tribunal. Respondents issued fresh letter of severe displeasure which without any prior notice to the applicant. As-there remains no adverse disqualification in service career, the respondents are directed to forthwith grant permanent commission to appellant. Impugned order set aside and quashed. OA allowed.

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1. **Review of judgment and order dated 24.01.2017 dismissing MA for condondation of delay along with connected OA-has been sought for**.

There was delay of 36 years in filing the OA. It is argued that the applicant’s case be heard on merit and not on point of delay.

**Held**- All points on the issue of delay were argued and considered at length. Judgment and order in OA-16/2017 does not show any error apparent on the face of the record. In view of limited scope of review application, there is no other ground for review. Dismissed being devoid of merit.

