

ARMED FORCES TRIBUNAL
REGIONAL BENCH
GUWAHATI

(Through Video-conferencing)

O.A. NO.28 OF 2018

In the matter of:

Ex-Sub Kamzathang Zou	... Applicant
Versus	
Union of India & Ors.	...Respondent

For applicant	: Mr. A R Tahbildar, Advocate
For the Respondents	: Mr. B Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN PM HARIZ, MEMBER(A)

ORDER

1. This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who is aggrieved by the order dated 13.11.2017 passed by Records the Assam Regiment rejecting applicant's claim for the disability element of pension with effect from 01.01.2006.

2. The brief facts of the case are that the applicant was enrolled in the Army on 18.10.1978 and was discharged from service on 31.07.2004 under Army Rule 13(3) 1(1) (b) at his own request

before completion of terms of engagement after rendering 25 years, 09 months and 13 days of service. The applicant was granted service pension vide Pension Payment Order (PPO) No. S/026332/2004 (Army) dated 26.04.2004 and Corrigendum Pension Payment Order (PPO) No. S/Corr/ 6th CPC/332342/2013 dated 19.12.2013.

3. At the time of discharge, the individual was in low medical category S1H1A1P2(P)E1 for diagnosis "PRIMARY HYPERTENSION" with the degree of disability assessed @ 30% vide Release Medical Board Proceedings (AFMSF-16) dated 18.04.2004. Accordingly, disability pension claim in respect of the applicant was submitted to PCDA(P), Allahabad vide Records The Assam Regiment letter No.3103/JC-598640/XX/Pen (DP) dated 14.08.2004. The same was rejected by them vide letter No. G3/70/178/8/04 dated 26.08.2004 stating that the applicant has been discharged at his own request/on compassionate grounds, hence claim for disability pension was not admissible as per rules. The applicant then approached the authorities for grant of disability element and rounding off from 30% to 50% vide letter dated 31.05.2016 which was rejected vide letter dated 17.06.2016.

4. Being aggrieved, the petitioner filed OA No. 52/2016 in the Hon'ble AFT (RB), Guwahati for grant of disability element with rounding off benefit. The Hon'ble AFT (RB), Guwahati vide Order dated 15.12.2016 in OA No. 52/2016 directed the respondents to grant disability element, and rounding it of from 30% to 50% to the applicant with arrears for a period of three years preceding the date of filing of the representation i.e. 02.11.2016. Accordingly, corrigendum PPO No. DE/01057/ 2017 dated 19.06.2017 was issued.

5. Thereafter, applicant approached Records The Assam Regiment vide his personal application dated 19.10.2017 to grant disability element with effect from 01.01.2006 in accordance with Govt, of India, Ministry of Defence letter no. 16(05)/2008/D (policy/Pension) dated 19.05.2017 and PCDA(P), Allahabad Circular No. 583 dated 05.09.2017. Records the Assam Regiment vide Letter No. 4030/JC-548640K/Pen (DP) dated 13.11.2017 intimated the applicant that as per the AFT (RB) order, he would be entitled to the arrears only for a period of three years preceding the date of filing of OA No. 52/2016 i.e. 02.11.2016 and that his disability element arrears were correctly notified in PPO No. DE/01057/2017 dated 18.06.2017. The applicant submitted another application

dated 06.01.2018 to the Records the Assam Regiment for the same relief but no decision on the same has been given by the authorities so far. Hence this OA.

6. The learned counsel for the applicant submitted that The AFT (RB), Guwahati vide order dated 15.12.2016 in OA No. 52/2016 had directed the respondents to grant disability element and round it off from 30% to 50%, with arrears for a period of three years preceding the date of filing of the representation i.e. 02.11.2016. In compliance of this Order, the authorities had issued PPO No DE010572017 dated 19.06.2017 granting disability element of pension for life to the applicant with interest and arrear w.e.f 02.11.2013. The Counsel then emphasised that since the Govt. of India's letter No 16(05)/2008/D(Pension/Policy) dated 19.05.2017 came into effect after the aforesaid judgment, therefore the applicant was entitled to receive the disability element of pension for life @ 50% with interest and arrear since 01.01.2006. he further stated that the Respondents had rejected the applicant's claim for disability element of pension wef 01.01.2006 without application of mind by ignoring the MoD's letter dated 19.05.2017.

7. The learned counsel for the applicant had further submitted that the letter no. 16(5)/2008/D(Pen/Policy) dated 19.05.2017 has

made it clear that there is no bar for grant of disability pension with rounding off benefit to those armed forces personnel who had retired voluntarily prior to 01.01.2006. The Counsel then emphatically stated that the action of the respondents in denying disability element of pension with rounding off benefits and arrear wef 01.01.2006 to the applicant on the plea of the aforesaid order of the AFT(RB), Guwahati, in spite of the fact that GoI letter dated 19.05.2017 had come into force after the Order in OA No 52/2016 was passed, was illegal, arbitrary and mala fide and as such liable to be interfered with.

8. Per contra, learned counsel for the respondents submitted that as per AFT(RB) Guwahati dated 15.12.2016, disability element with rounding off benefits was granted to the applicant with effect from 01.01.2006 and arrears with effect from 02.11.2013 vide PCDA(P), Allahabad PPO NO. DE/01057/2017 dated 19.06.2017.

9. Learned counsel for the respondents further submitted that Govt. of India, Ministry of Defence Letter 16(05)/2008/D (Policy/Pension) dated 19.05.2017 and PCDA (P), Allahabad Circular No. 583 dated 05.09.2017 directed that grant of disability element of pension to the armed forces personal who retired from service before 01.01.2006 at his own request and did not contain any

directions for payment of arrears wef 01.01.2006. The Counsel asserted that therefore, the petitioner was not entitled for arrears with effect from 01.01.2006, and that the OA be therefore dismissed.

10. We have heard learned counsel for the parties and perused the records. The relevant extract from Govt. of India's letter No 16(05)/2008/D(Pension/Policy) dated 19.05.2017 are reproduced below:-

Subject: Grant of Disability Element to Armed Forces Personnel who were retained in service despite disability attributable to or aggravated by Military Service and subsequently proceeded on premature/voluntary retirement prior to 01.01.2006

Sir,

1. XXXXX

2. XXXXX

3. *The issue of extension of above benefit to the Pre-2006 retired/ discharged Armed Forces Personnel, who were retained in service despite disability attributable to or aggravated by military service, was under active consideration of Government. Now, the President is pleased to decide that all Pre- 2006 Armed Forces Personnel who were retained in service despite disability and retired voluntarily or otherwise will be allowed disability element/war injury element in addition to retiring/ service pension or retiring/ service gratuity, subject to the condition that their disability was accepted as attributable to or aggravated by military service and had foregone lump sum compensation in lieu of that disability. Further, concerned Armed Forces Personnel should still be suffering from the same disability which should be assessed at 20% or more on the date of effect of this letter.*

4. XXXX...

11. Perusal of the above letter makes it clear that through this letter the Government has only extended the benefit of disability element/war injury element in addition to retiring/ service pension or retiring/ service gratuity, to pre- 2006 armed forces personnel who were retained in service despite disability and retired voluntarily or otherwise, subject to the condition that their disability was accepted as attributable to or aggravated by military service and had foregone lump sum compensation in lieu of that disability. It does not state that the arrears of cases granted relief in this regard will be entitled to arrears from 01.01.2006.

12. Moreover, it is a settled legal proposition in accordance with the principles laid down in the verdict of the Hon'ble Apex Court in *UOI & Ors. Vs Tarsem Singh, (2008) 8 SCC 648* that relief of arrears for the past period is to be restricted to a period on 3(three) years prior to date of filing the original application. In the instant case the applicant had approached this AFT(RB), Guwahati in the year 2016 by way of OA No. 52/2016. Thus, the applicant is legitimately entitled to arrears only for a period of three years period prior to 2016 i.e. 02.11.2013. Since this relief has already been granted vide

corrigendum PPO, no further relief is admissible. Hence, the OA is dismissed.

Pronounced in open Court on this 23rd day of March, 2023.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

**(LT GEN P.M. HARIZ)
MEMBER(A)**

ashok