

ARMED FORCES TRIBUNAL
REGIONAL BENCH
GUWAHATI
(Through Video-conferencing)

O.A. NO.50 of 2019

Ex-Sep Mangpu ... Applicant
 Versus
 Union of India & Ors. ... Respondent

For applicant : Mr. A R Tahbildar, Advocate
 For the Respondents : Mr. P Sharma, Advocate

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

O R D E R
23.03.2023

Vide separate detailed order passed today, OA stands allowed.

Learned counsel for the respondents makes an oral prayer for grant of leave to appeal for impugning the aforesaid order before the Hon'ble Supreme Court. However, there being no point of law, much less any point of law of general public importance involved in the order, which warrants grant of leave to appeal, the oral prayer is declined.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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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 passed by Records Signals dated 10.05.2019 rejecting applicant's claim for the benefit of rounding off the disability element from 01.01.1996 on the ground that he was discharged from service on completion of the term of his engagement.

2. The applicant was enrolled as Sepoy in 17.11.1977 and was discharged from service on 20.11.1992. He was placed in low medical category CEE(P) by the release medical board on 26.03.1992 for the disability BILATERAL SACRALISATION LV-5

722 (E) V-67 with the degree of disability as 15-19% for two years and the medical adviser(P) at PCDA accepted it as 20% and granted 20% disability element for five years from 01.12.1992 to 25.03.1997 vide PPO No DE/001835/93 (**Annexure-R-IV**) dated 26.04.1993. On subsequent review by re-survey medical board on 31.12.1996, degree of disablement was assessed as 15-19% for five years which was reviewed and assessed at 11-14% (Less than 20) by PCDA for 5 years from 26.03.1997 to 30.12.2001. The applicant was not entitled for any disability element during this period. Thereafter, another re-survey medical board was held on 19.06.2001, degree of disablement was assessed as 15-19% for life which was reviewed and assessed at 11-14% (Less than 20) by PCDA for life. Thereafter, disability element was stopped by pension sanctioning authority i.e. PCDA (P) Allahabad as intimated vide letter No.G-3/RA/11/2001/15355/11 (**Annexure-R-VII**) dated 21.12.2001. But his service element was continued. The applicant approached the authorities for continuation of his disability element of pension with rounding off benefit. But same was rejected by order dated 20.07.2016 on the ground that he is not eligible in accordance with Government of India, Min of Defence letter No 12 (16)/2009/D(Pen/Policy) dated 15.09.2014.

Being aggrieved, the applicant filed OA No 70/2016 before the Hon'ble Tribunal, Guwahati to grant disability element and round off benefits. The Hon'ble Tribunal vide order dated 20.03.2017 **(Annexure-R-XVII)** directed the applicant to prefer first appeal against rejection of disability element. Accordingly, first appeal against rejection of disability element was submitted to the authorities on 04.04.2017 **(Annexure-R-XVIII)**. The respondents agreed for another review medical board which was carried out on 09.05.2018 and the respondents accepted the claim of the applicant and notified disability element @ 20% wef from 22.09.2001 vide PPO no. DECORR012212018 dated 15.02.2019 **(Annexure-R-XXV)** but rounding off benefits @ 50% was granted wef 01.01.2016 only. Applicant submitted an application to the respondents for grant of rounding off his disability pension wef 01.01.1996. But respondent authorities have rejected saying that as per Government of India, Ministry of Defence letter No 12 (16)/2009/D(Pen/Policy) dated 15.09.2014 rounding off benefits is entitled to those personnel who have been invalided out from service before completion of service. Being aggrieved by non-grant of rounding off benefit @50% wef.

01.01.1996, the applicant is before this Tribunal seeking justice. Hence, this petition.

3. The learned counsel for the applicant submitted that an army personnel, who is discharged from military service with disability @ 20% or more and when the same is held to be either attributable to or aggravated by military service by the release medical board, is entitled to disability element of pension with broad-banding benefit of disability element of pension under the provisions of law and various Government notifications and also in terms of different judgements of the Armed Forces Tribunals and the Hon'ble Supreme Court passed from time to time.

4. Learned counsel for the applicant also submitted that the issue regarding granting of broad banding benefit of disability element of pension has attained finality in the Judgment Passed by the Hon'ble Supreme Court of India in Civil Appeal No. 418/2012 (Union of India versus Ram Avtar), wherein it is held that all Armed Forces personnel discharged from service with disability 20% or more and the same is either attributable to or aggravated by military service are entitled to broad-banding

benefit of disability element of pension, irrespective of nature of discharge.

5. The learned counsel for the applicant had also submitted that the applicant was discharged from service 20.11.1992 and the date of implementation of the concept of broad-banding/rounding off is 01.01.1996. Since the applicant has been granted disability element of pension @20% from the date of his discharge by the authorities, therefore, he is also entitled to the rounding off benefit of his disability element of pension from 01.01.1996. Moreover, it is to be noted that the applicant has been granted disability element of pension @ 50% with effect from 01.01.2016 by the authorities.

6. Learned counsel for the respondents took us through the details of the release medical board (RMB) proceedings and various policies governing grant of disability pension and submitted that as per para 7.2 of Govt. of India, Ministry of Defence letter No 1(2)/ 97/D (Pen-C) Dated 31.01.2001, it is clear that rounding off benefits were only applicable to invalided out cases and not to the person who are discharged from service after completion of terms and engagement of service. He then took us through the provisions of the policy letter dated

15.09.2014 and 04.09.2017. The counsel then elaborated on the policy letter dated 23.01.2018 and PCDA circular No. 596 dated 09.02.2018 and added that the applicant's disability had been rounded off from 01.01.2016 based on the policy of 2018.

7. We have heard both parties at length. The initial order for broad banding was issued vide MoD letter dated 31.01.2001 (Para 7.2). Subsequently, vide MoD letter dated 19.01.2010, the benefit was extended to armed forces personnel who were invalided out of service prior to 01.01.1996 and were in receipt of disability/war injury pension as on 01.07.2009. Subsequently, MoD vide letter dated 15.09.2014 extended the benefit of broad banding percentage of pension/war injury to armed forces personnel who were invalided out of service prior to 01.01.1996 and were in receipt of disability element/war injury as on 01.01.1996. In the present case, in pursuance the final Review Medical Board dated 09.05.2018, the respondents granted disability element @ 20% wef from 22.09.2001.

8. The aspect of broad banding is no longer *res integra* since the Apex Court in its judgement dated 10.12.2014 in the case of **Union of India and Ors. v. Ram Avtar** in CA 418/2012

and connected cases has held that Army personnel are entitled to the benefit of broad banding of disability war injury portion of pension irrespective of being invalided out or discharged on their completion of term of engagement/or for any other reason. The Apex Court in its judgement dated 31.03.2011 in the case of **Capt K J S Buttar v. Union of India and Ors.** in CA 5591/2006 also held that the benefit of broad banding is to be extended to all personnel irrespective of being invalided out of service or retired in low medical category on completion of service before or after 1996.

9. The PCDA circular 596 and MOD letter no. 17(01)D (Pension/Policy) dated 23.01.2018 relied upon here by the respondents to limit the rounding off order from 01.01.2016 is not applicable here as these instructions were issued to regulate the computation of disability pension on transition to 7th CPC regime. Thus, in this case the applicant is entitled to rounding off to 50% w.e.f 22.09.2001, the date from which disability element @ 20% was granted by the respondents vide PPO no. DECORR012212018 dated 15.02.2019 **(Annexure-R-XXV)**.

10. In view of the above, this OA is allowed and respondents are directed to grant benefit of rounding off disability element

from 20% to 50% for life with effect from 22.09.2001. Necessary corrigendum PPO be issued and the arrears be paid within three months of receipt of a copy of this order.

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

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

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

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