

ARMED FORCES TRIBUNAL
REGIONAL BENCH
GUWAHATI
 (Through Video-conferencing)
O.A. NO.15 OF 2020

2.

Ex-Nk W Kolap Sing Anal ... Applicant
 Versus
 Union of India & Ors. ... Respondent

For applicant : Mr. A R Tahbildar, Advocate
 For the Respondents : Ms. Deepanjali Bora, Advocate

CORAM:

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

ORDER
15.03.2023

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 The Assam Regiment dated 23.11.2019 rejecting applicant's claim for the benefit of rounding off the disability element from 30% to 50% from 01.01.2006 on the ground of he was discharged from service on completion of the term of his engagement.

2. The applicant was enrolled as Sepoy in the Assam Regiment on 13.12.1983. During service, the applicant was placed in low medical category P2 (permanent) for diagnosis 'PULMONARY

TUBERCULOSIS (A15-0) which was considered “attributable to military service” with 30% disability for life and ‘NIDOM’ which was considered as “neither attributable nor aggravated to military service” with 15-19% disability were assessed vide Release Medical Board (AFMSF-16) dated 28.12.2005. Thereupon, the applicant was discharged from service w.e.f 01.01.2006 in low medical category P3 (P) after 22 years of exemplary service in the force. On his discharge from service, though the applicant was granted 30% disability element of pension for life by the Release Medical Board, but rounding off benefit of disability element was not granted to him. The applicant had submitted two applications to Records The Assam Regiment on 18.06.2019 and 02.10.2019 respectively for granting the benefit of rounding off the disability element from 30% to 50% wef 01.01.2006 i.e. the date of discharge but the same was rejected by Records the Assam Regiment vide the impugned order dated 23.11.2019 on the ground that percentage of rounding off benefits was applicable to him with effect from 01.01.2016 only as per para 6 of PCDA (P) Circular No 596. 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 Govt. 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 Hon'ble Supreme Court judgment 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 was 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 has also submitted that the applicant was discharged from service 01.01.2006 and the date of implementation of the concept of broad-banding / rounding off was 01.01.1996. Since the applicant had been granted disability element of pension @30% from the date of his discharge by the authorities, therefore, he was also entitled to the rounding off benefit of his disability element of pension from the

date of discharge i.e. 01.01.2006 and not from any future artificial date. The benefit must flow to all affected parties without having to litigate for it. Moreover, it is to be noted that the applicant had 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 Jan 2001, it is clear that rounding off benefits were only applicable to invalidated 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.

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. Vs. 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 Vs. 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% wef 01.01.2006, the date of discharge of the applicant.

10. In view of the above, this OA is allowed and respondents are directed to grant benefit of rounding off disability element from 30% to 50% for life with effect from 01.01.2006. 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 15th day of March, 2023.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

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

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