

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

OA 31 of 2019 WITH MA 22 of 2019

Ex-Sub Thangboy Vaiphei ... 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)

ORDER
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)

SM

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

OA 31 of 2019 WITH MA 22 of 2019

Ex-Sub Thangboy Vaiphei ... 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)

ORDER

MA 22/2019

Keeping in view the averments made in this application and finding the same to be bona fide, in the light of the decision in **Union of India and others Vs. Tarsem Singh** (2008) 8 SCC 648, the instant application is allowed condoning the delay in filing the OA. MA stands disposed of.

OA 31/2019

2. 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 21.12.2018 rejecting applicant's claim for the benefit of

rounding off the disability element from 20% to 50% from 01.04.2007 on the ground that he was discharged from service on completion of the term of his engagement.

3. The applicant was enrolled as Sepoy in the Assam Regiment on 16.03.1979. During service, the applicant was placed in low medical category P2 (Permanent) for "BILATERAL PNEUMONIA EFFECTS OF (J-16). The applicant was discharged from service w.e.f 01.04.2007 in low medical category P2 (P) after 28 years of exemplary service in the force. On his discharge from service, though the applicant was granted 20% disability for life by the Release Medical Board, but rounding off benefit of disability element was not granted to him. Thereafter, the applicant had submitted an application to the Records The Assam Regiment on 28.11.2018 (**Annexure-D**) for granting the benefit of rounding off the disability element from 20% to 50%. Records The Assam Regiment vide the impugned order dated 21.12.2018 (**Annexure-E**) informed the applicant that since the applicant was discharged from service on completion of the terms of his tenure, hence, he is entitled to the benefit of rounding off the

disability element only with effect from 01.01.2016. Hence, this petition.

4. 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.

5. 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.

6. The learned counsel for the applicant had also submitted that the applicant was discharged from service 01.04.2007 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 the date of discharge i.e. 01.04.2007 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 has been granted disability element of pension @ 50% with effect from 01.01.2016 by the authorities.

7. 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.

8. 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.

9. 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.

10. 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 01.04.2007, the date of discharge of the applicant.

11. 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 01.04.2007. Necessary corrigendum PPO be issued and the arrears be paid within three months of receipt of a copy of this order.

12. Pending miscellaneous application(s), if any, stands closed.

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

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

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

ashok