

ARMED FORCES TRIBUNAL
REGIONAL BENCH
GUWAHATI
(Through Video-conferencing)
O.A. NO.33 OF 2019

4.

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

For applicant : Mr. A R Tahbildar, Advocate
For the Respondents : Mr. P J Barman, 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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OA 33/2019
Ex-Sep Lunkam Vaiphei

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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 27.12.2018 and 21.05.2019 rejecting applicant's claim for the benefit of rounding off the disability element from 20% to 50% from 01.07.1999.

2. The applicant was enrolled as Sepoy on 19.6.1982 and posted to 10 Assam Regiment. During service, the applicant suffered from 'SPINA BIFIDA SV-I WITH LOW BACKACHE'. He was placed in Low Medical Category CEE(P) by the Release Medical

Board on 07.04.1999 with the degree of disability assessed at 15-19% for five years and PCDA accepted it as 20%. He was discharged from service wef. 01.07.1999 and granted 20% disability element for two years i.e. up to 06.04.2001 vide PPO No DE/012538/99. Thereafter, the applicant approached the authorities claiming continuation of his disability element with rounding off benefit. But the same was rejected by order dated 30.8.2016 on the ground that the PCDA(P), Allahabad had rejected applicant's claim for disability pension due to the disability being less than 20%. Being aggrieved, the applicant filed OA No 69/2016 before the Hon'ble Tribunal, Guwahati for grant of disability element and rounding off benefits. The Hon'ble Tribunal directed the applicant to prefer first appeal against rejection of disability element vide order dated 20.3.2017. Accordingly, first appeal against rejection of disability element was submitted to the authorities on 05.04.2017. The appeal has been accepted by the respondents and vide corrigendum PPO dated 14.08.2018 granted 20% disability element from 07.04.2001 but rounding off benefits @ 50% was given wef 01.01.2016 only. Applicant submitted an application to the respondents for grant of rounding off his disability pension wef 01 Jul 1999. But respondents vide letter dated 27.12.2018 have informed that

rounding off benefits of disability element was applicable to the applicant wef 01.01.2016 only. Not satisfied with the reply, applicant again preferred an another application on 19.04.2019 to review his case but the authorities vide their letter dated 21.05.2019 have rejected his prayer to grant rounding off benefit wef. the date of his discharge. Hence this application.

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. The learned counsel for the applicant further submitted that the authorities by their illegal action have violated the applicant's fundamental rights as guaranteed under Part III of the Constitution of India as well as the rights granted by the Rules/Regulations holding the field and as such, same needs to be interfered with by thus Hon'ble Tribunal for the ends of justice.

5. Per contra, Learned counsel for the respondents submitted that the RMB had assessed the disability at 15-19% for five years and held it as aggravated by military service. He further added that initially the applicant had been granted disability element at @ Rs.90/- per month which was then revised to Rs.310/- per month. The applicant filed an OA being OA No.69/2016 for grant of disability element and its rounding off. The Hon'ble Tribunal vide order dated 20 Mar 2017 allowed the OA with direction that the applicant should prefer the first appeal before the Appellate Authority. Accordingly, the first Appeal was preferred before Appellate Authority who directed the applicant to appear before a Re-survey Medical Board. Accordingly, Re-survey Medical Board of the petitioner was carried out at Army Hospital (R&R), New Delhi and his disability was assessed @ 20% for life. As per direction of the Appellate Authority and the opinion of the Medical Board, PCDA (P), Allahabad continued his disability element @ 20% with effect from 07.04.2001 to 31.12.2015 and on revision of policy, rounded off be paid to the petitioner @50% with effect from 01.01.2016 for life. Therefore, the contentions made by the applicant in the present OA are baseless, misleading and untenable and the application needs to be dismissed.

6. 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.

7. 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 KJS 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 01.07.1999, the date on which, PCDA (P), Allahabad initially granted disability element vide PPO No.12538/99.

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 01.07.1999. 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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