

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

O.A. NO.60 OF 2019

Ex-Hony Nb Sub KT Divension 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

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 ASC Records (South) dated 07.09.2019 rejecting applicant's claim for the benefit of rounding off the disability element from 30% to 50% from 01.11.2006 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 Army Supply Corps (ASC) on 10.10.1982 and in due course, was promoted to the rank of Havildar. The applicant was discharged from service

w.e.f 01.11.2006 after 24 years of exemplary service in low medical category P2 (P) for diagnosis 'VIRAL HEPATITIS (HBS Ag Positive)' as "attributable to military service" with 30% disability for life. On his discharge from service, though the applicant was granted 30% disability element of pension initially for two years and thereafter for life by the Release Medical Board, but rounding off benefit of disability element was not granted to him for which the applicant had submitted an application to the ASC Records (South), C/O 56 APO on 14.06.2019 for granting the benefit of rounding off the disability element from 30% to 50% and the same was rejected by the ASC Records (South) vide the impugned order dated 07.09.2019 on the ground that since he 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 with effect from 01 Jan 2016. 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 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 the nature of discharge.

5. The learned counsel for the applicant also submitted that the applicant was discharged from service 01.11.2006 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 @30% 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. 01.11.2006 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 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 Jan 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.

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 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 01.11.2006, 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 01.11.2006. 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)**

ashok