

IN THE ARMED FORCES TRIBUNAL

REGIONAL BENCH, GUWAHATI

O.A.- 56 OF 2017.

**Ex-Naik (TS) Bhupendra Nath Das,
No. 14253210P,
S/o Late Sarbeswar Das,
Vill. Pathsala, Chandra Nagar,
Ward No. 9, P.O. Pathsala,
Dist. Barpeta, Assam.**

.....Applicant.

By legal practitioners
for Applicant.

**Mrs. Rita Devi,
Mr. AR Tahbildar.**

-Versus-

- 1. Union of India,
Represented by the Secretary,
Ministry of Defence,
Sena Bhawan, New Delhi-11.**
- 2. OIC Records, Signals,
Pin (Army) 908770,
C/o 56 APO.**
- 3. Additional Directorate General
Personnel Services, PS-4(d),
Adjutant General's Branch,
IHQ of MoD (Army), DHQ, New Delhi.**
- 4. The Principal Controller of Defence
Accounts (Pension), Allahabad, Pin 211014,
Uttar Pradesh.**

....Respondents

By legal practitioners
for Respondents.

Mr. N.Baruah, CGSC.

PRESENT

HON`BLE DR. (MRS) JUSTICE INDIRA SHAH, MEMBER (J)
HON`BLE LT GEN C.A.KRISHNAN, MEMBER (A)

ORDER

23.02.2018

Per Lt Gen C.A.Krishnan, Member(A)

This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 praying for grant of broad banding benefit to the applicant.

2. The applicant was enrolled in the Army on 20.11.1983 and was discharged from service on 01.12.2000 in low medical category under the Army Rule 13(3)(iii)(i) on completion of terms of engagement. On discharge from the service the applicant is in receipt of 30% disability pension but the benefit of broad banding of disability element has not been granted to him so far.

3. Heard Mr. AR Tahbildar, learned Counsel for the applicant and Mr. N.Baruah, learned Central Govt. Standing Counsel appearing for the respondents. Since it is a case of broad banding from 30% to 50%, and the documents annexed to the instant application are not refuted by the respondents, we proceed to dispose of the case after hearing both sides.

4. Learned Counsel for the applicant submitted that vide letter dated 31.1.2001, the Ministry of Defence granted benefit of broad banding of disability pension only to the personnel boarded out of service post 1996 and not to personnel who retired from service on completion of terms of engagement with disability. But the Hon`ble Apex Court vide judgment dated 31.3.2011 passed in Civil Appeal 5591/2006 in Cap K J S Buttar Vs. Union of India & Ors. extended the benefit of broad banding to all personnel

irrespective of being invalided out of service or retired in low medical category on completion of service before or after 1996. In its order dated 10.12.2014 in Union of India & Ors. Vs. Ram Avtar, in Civil Appeal No. 418/2012 the Hon`ble Apex Court has held that irrespective of the nature of discharge personnel getting disability pension would be entitled to the benefit of rounding off. Therefore, the applicant is entitled to rounding off benefit. Learned Counsel for the respondents while not disputing the fact that the case is covered under the Hon`ble Supreme Court`s judgments cited above, stated that the orders for broad banding benefit to the individual has not been received as yet.

5. We have considered the submissions advanced by the learned Counsel for both the parties and perused the records.

6. It is not in dispute that the applicant was enrolled in the Army on 20.11.1983 and released on superannuation in low medical category on 01.12.2000 and he has been receiving disability pension @ 30% for life with effect from 01.12.2000 as is evident from his corrigendum PPO 150344/2012 dated 17th September, 2012 at Annexure-E (page 28).

7. The issue relating to grant of broad banding is no longer res integra in view of the order passed by the Hon`ble Supreme Court in Ram Avtar (Supra), wherein the Hon`ble Supreme Court directed the respondents to grant the said benefit also to personnel who have not only been invalided out from service but those falling in other categories also. The Govt. of India has also decided to implement the aforesaid direction of the Hon`ble Supreme Court to grant the benefit of broad banding of disability element of pension to the armed forces personnel, who have retired or discharged on completion of the terms of engagement with disability aggravated or attributable to military service from the date mentioned in his

respective court order which has been communicated by the Under Secretary to the Govt. of India, Ministry of Defence, Department of Ex-Servicement Welfare D(Pension/Legal) vide letter No. 3(11)2010-D Pen/Legal-Pt.V dated 18.04.2016. Relevant portions of the letter is set out below:

“(a) the Hon`ble Supreme Court vide order dated 10.12.2014 dismissed more than 800 Civil Appeals tagged with Civil Appeal No. 418 of 2012 filed by the Union of India Vs. Ram Avtar challenging grant of broad banding of disability element by AFTs to Armed Force Personnel other than “Invalided out” from service. The Hon`ble Supreme Court ruled that an Armed Force Personnel retired on completion of tenure with disability aggravated by or attributable to military service is eligible for broad banding of disability pension/element.

(b) Accordingly, approval of competent authority is hereby conveyed for implementation of Court/AFTs orders granting broad banding of disability element to an armed force personnel retired or discharged on completion of terms of engagement with disability aggravated by or attributable to military service from the date mentioned in respective court orders.”

8. A Full Bench of the Principal Bench of this Tribunal vide order dated 01.12.2017 passed in OA 1439/2016 Ex Sgt Girish Kumr Vs. UOI & Ors and other related matters has held as under:

“55. After having fully discussed the issue involved before us and to set the controversy at rest vis-à-vis arrears of broad banding of the disability/war injury element of disability pension on the ground of delay in filing application(s) by the individual/applicant(s), we conclude thus:

(i) Armed Forces personnel who have been invalidated/superannuated/completed terms of service/discharged under normal circumstances with disability, pre or post 01.01.1996, (including the applicants) will be entitled to broad banding of disability/war injury element. Armed Forces personnel who retired pre 01.01.1996 will be entitled to the arrears of broad banding with effect from 01.01.1996 and in the case of those who retired on or after 01.01.1996 will be entitled to arrears with effect from the date of their retirement;

(ii) Armed Forces personnel who were premature retirees/proceeded on premature discharge with disability will be entitled to broad banding of disability/war injury element of pension with effect from either 01.01.2006 or the date of their retirement. There will, however, be no restriction of date for premature retirees to be eligible for disability/war injury benefits since the earlier restriction on pre 01.01.2006 premature retirees has been struck down.

(iii) In all cases at (i) and (ii) preceding, there will be no restriction of three years on arrears and arrears will be paid according to eligibility (as stated preceding).

9. That being the position, we are of the considered opinion that the applicant is entitled to the benefit of broad banding of the disability pension. In view of the above, the respondents are directed to pay the benefit of broad banding disability pension to the applicant from 30% to 50%. The respondents are further

directed to make payment of arrears with effect from 01.12.2000 within a period of 4 (four) months from today, in default thereof, the arrears shall carry interest @ 9% per annum till the date of actual payment.

10. The O.A. is accordingly allowed.

11. No costs.

12. Learned Counsel appearing for the respondents has made an oral prayer to grant leave to appeal to Hon`ble Supreme Court under Section 31 of the ACT Act, 2007. Since the order does not involve any point of law having general public importance, the prayer for leave to appeal before the Hon`ble Supreme Court stands rejected.

MEMBER (A)

MEMBER (J)

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