

ARMED FORCES TRIBUNAL
REGIONAL BENCH
GUWAHATI
(Through Video-conferencing)
O.A. NO.38 OF 2019 WITH MA 30/2019

In the matter of:

Ex Sep Suresh Chandra Sharma ... Applicant

Versus

Union of India & Ors. ...Respondent

For applicant : **Mr. R.K. Talukdar, Advocate**

Mr. R. Boro, Advocate

For the Respondents : **Mr. P.K. Garodia, Advocate**

CORAM:

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

ORDER
15.05.2023

Vide separate detailed order passed today, OA stands partially 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 a retired sepoy and is aggrieved on not being granted disability pension. Through this instant O.A, the applicant seeks the following reliefs:

- (a) Immediately release the arrear disability pension @ 30% p.m. w.e.f. 01/01/1993 to 31/12/1995 along with interest @ 12% p.a. till payment is made.

(b) Grant the revised pension @ 50% instead @ 30% in terms of Circular No. 596 dated 09/02/2019 along with interest @ 12% from the effective date.

(c) Grant any other relief or relieves as this Hon'ble Tribunal may be deem fit and proper in the facts and circumstances of the case of the applicant.

2. The applicant was enrolled in the Army on 31.12.1968 and was discharged from service on 01.04.1979 in permanent low medical category 'CEE' under Army Rule 13(3) III (v) after rendering 10 years and 3 months of service. The applicant was placed in low medical category BEE (Permanent) w.e.f 23.11.1976 for the disability 'ASTHMATIC BRONCHITIS'. Prior to discharge, the applicant was brought before a release medical board which assessed the disability as 30% for two years and held it aggravated due to military service. The applicant was granted disability pension @ 30% from 02.04.1979 to 29.10.1980 vide PPO No. D/2511/79 dated 30.08.1979. The applicant was further granted disability pension for two years from 21.12.1980 to 21.10.1982 vide PPO No. D/RA/477/81. This was subsequently extended for another ten years from 22.10.1982 to 30.12.1992 vide PPO No. D/RA/4201/83.

3. The respondents then forwarded applicant's documents to MH Bareilly to conduct the RSMB vide letter dated 17.08.1992. Though the call up notice was sent by the MH, it was returned undelivered with the remark that the applicant had shifted to Assam. Accordingly, all the documents were transferred to 5 AFH (Johrat). The applicant did not report to 5 AFH (Johrat) either, and the matter was referred to Zila Sainik Board and the case was temporarily closed.

4. Thereafter, the applicant submitted a petition dated 19.03.2014 for holding his RSMB. The RSMB was then held on 05.08.2017 (**Annexure 3**) and it assessed the percentage of disability at 30% for life with the remarks that the disablement percentage (%) for the intervening period from 30.12.1992 to 05.08.2017 will remain the same as per previous AFMSF-17 dated 31.12.1982. PCDA (P) Allahabad, accordingly issued corrigendum PPO No DCPRR000362018 dated 12.01.2018 (**Annexure 5**). Disability pension of the applicant was granted with effect from 01.01.1993 to for life as-

Sr. No.	Disability element rate	% of disability	From	To
1.	Rs. 135/- per month	30	01.01.1993	31.12.1995
2.	Rs. 465/- per month	30	01.01.1996	31.03.2004
3.	Rs. 698/- per month	30	01.01.2004	31.12.2005

4.	Rs. 1053/- per month	30	01.01.2006	30.06.2014
5.	Rs. 1114/- per month	30	01.07.2014	31.12.2015
6.	Rs. 2863/- per month	30	01.01.2016	For Life
RSMB dated 05.08.2017				
1. The amount already paid to the individual be adjusted accordingly.				
2. This award of disability element is in addition to service element granted for life to the individual vide this office PPO D/2511/1979				
3. This disability element is granted to the individual @ 30 % w.e.f 01.01.1993 for life as per RSMB dated 05.08.2017				

5. The counsel for the applicant submitted that even though, after the opinion of the medical board, the applicant is getting his disability pension @ 30% till date but the respondents authorities have not paid him the arrears of disability pension @ 30% w.e.f 01.01.2993 to 31.12.1995 till date. He further submitted that as per PCDA Circular No. 596 dated 09.02.2018, those with disability 20% or more but less than 50% will be rounded off to 50% for computing disability element. The counsel asserted that the applicant has been in receiving disability element @ 30% and that it has not yet been rounded off.

6. Per contra, the counsel for the respondents submitted that the entitlement of applicant's rounding off benefits are not denied. However, he objected to the prayer of the applicant with respect to

grant of interest. Further the counsel submitted that arrear of disability pension claimed by the applicant for the period 01.01.1993 to 31.12.1995 @ 30% per month is time barred and is liable to be rejected. Moreover, the arrears have been released as per the PPO dated 12.01.2018.

7. Having heard both parties at length, the issues to be decided are-

(a) Whether the applicant is entitled to arrear disability pension @ 30% p.m. w.e.f. 01/01/1993 to 31/12/1995 along with interest?

(b) Whether the applicant is entitled for rounding off benefits?

8. The corrigendum PPO issued vide PPO No DCPRR000362018 dated 12.01.2018. **(Annexure 5)** is abundantly clear that disability pension of the applicant was granted with effect from 01.01.1993 for life as per RSMB dated 05.08.2017 and if the applicant has any further grievance regarding the non-receipt of any amount or reconciliation of the account, the same can be agitated separately.

9. As far as the issue of broad banding is concerned, 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.

10. 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. Since the applicant is in

receipt of disability pension as on 01.01.1996, he is entitled to broad banding from 01.01.1996.

11. In view of the above, this OA is partially allowed and respondents are directed to grant benefit of rounding off disability element from 30% to 50% for life with effect from 01.01.1996. Necessary corrigendum PPO be issued and the arrears be paid within three months of receipt of a copy of this order. As regards the payment of arrears, the applicant is directed to ascertain the details from his bank and will have the liberty to agitate the non-receipt of arrears afresh as per law.

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

Pronounced in open Court on this ___15th___ day of May, 2023.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

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

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