IN THE ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI

OA- 07/2017

PRESENT

HON`BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)
HON`BLE VICE ADMIRAL MP MURALIDHARAN, MEMBER (A)

No. JC-208182X Ex-Sub Maj & Hony Lt
WS Binosing Anal
Vill-Chakpikarong
PO Chakpikarong
Dist- Chandel (Manipur)
Pin-795102

..... Applicant.

By legal practitioners for Applicant.

Mrs. Rita Devi
Mr. A.R.Tahbildar

-VERSUS-

1. **Union of India,**
   Represented by the Secretary,
   Govt. of India, Ministry of Defence
   Sena Bhawan, New Delhi – 110011.

2. **Records The Kumaon Regiment**
   PIN -900473
   C/O-56 APO.

3. **Additional Directorate General**
   Personnel Services, PS -4(d)
   Adjutant General's Branch
   IHQ of MOD (Army), DHQ, PO New Delhi

4. **Principal Controller of Defence Accounts (Pension)**
   Allahabad, PIN 211014
   Uttar Pradesh ..... Respondents..

By Legal Practitioner for the Respondents
Mr. C. Baruah, CGSC

Date of Hearing : 22.05.2017
Date of Order : 22.05.2017

O R D E R

VAdm.M.P.Muralidharan,Member(A)

1. The Original Application has been filed by Ex-Sub Maj & Hony Lt WS Binosing Anal No. JC-208182X of Kumaon Regiment seeking broadbanding of disability element of disability pension granted to him. The applicant has also sought that Regulation 53(b) of the Pension Regulations for the Army, 2008 which discriminates between those who are invalidated out from service and those discharged from service on superannuation, in the matter of grant of benefit of rounding off, be set aside.

2. The applicant was enrolled in Army on 29.04.1980 and in due course promoted to the rank of Subedar Major and also granted the Rank of Hony Lt. The applicant was discharged from service on 31.03.2009. In addition to service pension, the applicant was also granted disability element of the pension at 60% vide PPO No. DE/012314/2009 dated 26.06.2009 (Annexure-B).

3. Mr. AR Tahbildar, learned counsel for the applicant submitted that the applicant was granted disability pension at 60% based on the assessment of the Release Medical Board held at the time of his discharge. Learned counsel further submitted that based on the Hon'ble Apex Court's decision in ***Civil Appeal No. 418 of 2012 (Union of India Vs. Ram Avatar)***, the Government has revised the policy of braodbanding the disability element of pension and even those who retire on completion of their terms of engagement with a disability aggravated by or attributable to military service were held eligible for the benefit of broadbanding of disability element of pension (Annexure-C). The applicant who had been discharged with 60% disability was, therefore, eligible to the benefit of rounding off the same to 75% in accordance with regulation 98(c) of the Pension Regulations of the Army, 2008. The applicant had accordingly preferred an appeal to the respondents for grant of the benefit. The respondents, however, rejected the appeal stating that the benefit of rounding off, was applicable only to those who had been discharged/invalidated out from service prior to completion of their terms of engagement (Annexure-F).

4. Learned counsel also submitted that the Hon'ble Apex Court in ***Ram Avatar (Supra)*** had clearly held that personnel who were suffering from any disability, attributable to or aggravated by military service, were entitled to the benefit of rounding off, even on superannuation or if discharged on completion of the term of engagement. The revised policy of the Government also does not make any difference between those who had invalidated out or those who had retired on superannuation or on completion of term of engagement. Therefore, Regulation 53(b) of the Pension Regulations for the Army, 2008, denying the benefit of rounding off to those who had retired on completion of their terms of engagement has no legal validity. Learned counsel further submitted that the Regional Bench of this Tribunal at Kochi had examined the legality of the Regulation 53(b) and struck down the same in ***OA No. 93 of 2016 - Nb Sub Jadhav Maruti Bhan Vs Union of India & Ors***. Learned counsel, therefore, prayed that the applicant be granted the benefit of rounding off of disability element of pension from the date of his discharge.

5. Mr. C. Baruah, learned CGSC, assisted by Lt. Akash Vashisht, OIC Legal Cell, 51 Sub Area appearing on behalf of the respondents, submitted that the applicant was not eligible for the benefit of rounding off as he was discharged from service on completion of terms of engagement. The benefit is applicable only to those who have been discharged/invalidated out from service before completion of their terms of engagement.

6. Heard rival submissions and perused the records.

7. It is not disputed that the applicant was granted disability element of pension @ 60% for life on his discharge from service. The only issue before us is whether the applicant is entitled to the benefit of broadbanding.

8. The respondents are of the view that, as the applicant was discharged from service on fulfilling the conditions of his terms of engagement, he was not entitled to the benefit of rounding off/broadbanding. Since the applicant was discharged from service on 31.03.2009, the Pension Regulation for the Army, 2008 would apply. Therefore, we also need to look at impact of Reg 53(b) of the said Regulations which denies the benefit of rounding off to personnel who were discharged on completion of their terms of engagement. The issue is no more *res- integra* as the Regional Bench of this Tribunal at Kochi in ***Nb Sub Jadhav Maruti Bhan (Supra)*** had examined the issue where one of us was a Member and had held as follows:-

"17.....The benefit of rounding off/broadbanding of disability element of pension was introduced based on recommendations of the V CPC vide Ministry of Defence Letter No. 1(2)/97/D(Pen-C) dated 31 Jan 2001. While the benefit of broadbanding was granted to those who were in service on 01 Jan 1996 or joined service thereafter in accordance with para 7.2 of the letter, vide para 8.2 of the letter the benefit of para 7.2 was not applicable to those who were retained in service, despite the disability and were retired/discharged on attaining the age of retirement or on completion of tenure. The above issue was looked into by the Hon'ble Apex Court ***in UOI & Ors v. Ram Avatar, Civil Appeal No. 418 of 2012,*** and after examining the provisions of the said letter, the Hon'ble Apex Court held that even an individual who retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by Military service, is entitled to the benefit of rounding off of disability pension.

18. As regards the applicant, since he was discharged in May 2011, Pension Regulations for the Army, 2008 would apply. Regulation 53 as noted earlier pertains to grant of disability element of disability pension. Regulation 53 however states that the provisions of Regulation 98(c) which is broadbanding of the disability element of pension, will not be applicable to those who are released/retired/discharged on completion of their terms of engagement or on attaining the prescribed age limit. It is observed that Regulation 53 is modification of the earlier Regulation 179 of Pension Regulations for the Army, 1961, pertaining to disability at the time of retirement/discharge. It is also observed that the Regulation has been modified in accordance with para 8 of the Ministry of Defence Letter dated 30 Jan 2001 quoted earlier. As brought out, the said provision of denying broadbanding to personnel who were discharged on completion of their terms of engagement was struck down by the Hon'ble Apex Court in Ram Avatar (Supra). It is also observed that a revised policy on broadbanding was promulgated by the Government vide Minisitry of Defence Letter No. F. No. 3(11)2010-D(Pen/Legal)-pt-V dated 18th April 2016 in view of the judgment of the Hon'ble Apex Court in Ram Avatar (Supra). Para 2 of the letter being relevant is reproduced below:-

> "2. The matter of implementing Hon'ble Apex Court Judgment dated 10.12.2014 in case of ***Civil Appeal No. 418 of 2012*** taken up with Department of Expenditure, Ministry of Finance for consideration. Department of Expenditure, Ministry of Finance has agreed to implement orders of the Courts on the matter of broad banding of disability element in the case of personnel who are retained in service till normal retirement. Accordingly, approval of competent authority is hereby conveyed for implementation of Courts/AFT's orders granting broadbanding of disability element to an Armed Forced 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."
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> 19. It is therefore observed that in keeping with the directives of the Hon'ble Apex Court, the Government approved granting of benefit of broadbanding of disability element to even personnel, who were retired or discharged on the completion of their terms of engagement, where the disability was aggravated or attributable to Military Service. It is further observed that the Policy Letter issued on 18th April, 2016 does not make any differentiation between those who retired when the earlier Pension Regulations for the Army 1961 were in force and those retired after the Pension Regulations for the Army 2008 came into effect. It is therefore evident that the Government itself has done away with the provisions of Regulation 53(b) i.e. for PBOR and its equivalent for officers i.e. 37(b) of the Pension Regulations for the Army 2008. When that be so, even though the letter does not indicate the deletion of the two sub-regulations, in keeping with the principles enunciated by the Hon'ble Apex Court in Ram Avatar (Supra) and the subsequent policy changes, we find both regulations are ultra vires and deserve to be struck down and we do so. In view of the above, the applicant would also be eligible for the benefit of rounding off in accordance with law.

9. We do not find any reason to disagree with the above views taken by the regional bench of this Tribunal at Kochi. In our view, therefore, the applicant is also eligible for the rounding off of disability element of pension.

10. In view of the foregoing, the Original Application is partly allowed declaring that the applicant is entitled to the benefit of rounding off disability element of pension in accordance with law from the date of grant of the same i.e. in this case from the date of his discharge. The arrears would, however, be

restricted to a period of three years preceeding the date of filing of the Original Application (07.02.2017) in accordance with our orders dated 22.05.2017 passed in MA 08/2017 while condoning the delay in filing the Original Application with simple interest @ 9% per annum from the said date till payment. The respondents are directed to pay the arrears restricted as above, with interest to the applicant within a period of six months from the date of receipt of a copy of this order.

11. Original Application is accordingly allowed as indicated above.

12. There will be no order as to costs.

13. Order dasti.

14. Mr. C Baruah, learned CGSC appearing for the respondents made an oral prayer for grant of leave to appeal to the Hon'ble Supreme Court Under Section 31 of the AFT Act, 2007. Since the order does not involve any question of law having general public importance, the prayer for leave to appeal to the Hon'ble Supreme Court stands rejected.

MEMBER (A) **MEMBER (J)**

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