

**IN THE ARMED FORCES TRIBUNAL REGIONAL BENCH,
GUWAHATI.**

OA -12 of 2017

P R E S E N T

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

No. JC-549701H Ex-NB SUB L Shyama
Vill-New Lamka, Churachandpur
PO-Churachandpur
Dist-Churachandpur, Manipur

..... **Applicant**

Legal practitioner for the 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. Records The Assam Regiment
PIN (ARMY)-900332,
C/o-99 APO
3. Additional Directorate General,
Personnel Services, PS-4(d)
Adjutant General's Branch
IHQ of MOD (Army), DHQ,
PO-New Delhi
4. The Principal Controller of Defence
Accounts (Pension), Allahabad
PIN-211014
Uttar Pradesh

..... **Respondents**

Legal practitioner for the
Respondents
Mr. C. Baruah, CGSC

Date of Hearing : 21.02.2018
Date of Judgment & Order : 23.02.2018

ORDER

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

This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has claimed disability pension.

2. In, brief, the petitioner was enrolled in the Indian Army on 19.10.1987 and discharged on 01.02.2012 in Low Medical Category P3(P). The Release Medical Board held at Military Hospital, Shillong on 03.11.2011 assessed the applicant's disability in invaliding disease "OSTEOSARCOMA (LEFT) FEMURE LOWER END" @ 40% for life and declared it as neither attributable nor aggravated by Military service.

3. The applicant has claimed disability element of pension from the date of retirement and arrears with interest thereon.

4. Learned counsel appearing for the respondents submitted that the individual was enrolled in the Army on 19.10.1987 and discharged from service on 01.02.2012. At the time of discharge, his invaliding decease was assessed to be neither attributable nor aggravated by military service and after due examination of his case in consultation with the competent authority, it was decided that he was not entitled to disability pension in terms of Regulation 179 of Pension Regulation for the Army 1961, Part-I. The same was conveyed to the applicant vide Records Assam Regiment letter No. 4030/JC-549701/02/pen (DP) dated 31.01.2012. Hence the disability pension has been rightly declared as neither attributable nor aggravated by Military service.

5. Learned counsel for the applicant, on the other hand, submitted that after having been found medically fit at the time of enrolment the applicant had served the Army for 24 years before he was discharged and argued that his disability should have been declared as attributable to Military service. Learned counsel further submitted that the case of the applicant is covered by the Judgment dated 02.07.2013 of Hon'ble Supreme Court in **Dharamvir Singh Vs. Union of India & Ors passed in Civil Appeal No. 4949/2013** wherein the Hon'ble Supreme Court observed-

31. *In the present case it is undisputed that no note of any disease has been recorded at the time of the appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In the absence of any note in the service record at the time of acceptance of joining of the appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service....."*

6. We have heard Mr. AR Tahbildar learned counsel appearing for the applicant and Mr. C. Baruah, learned CGSC appearing for the respondents. Also we have gone through the records and submissions made by both the parties.

7. The applicant is pleading for disability pension as per law settled by Hon'ble Supreme Court *in Dharamvir Singh Vs. Union of India & Ors (Supra)* and Hon'ble Supreme Court Judgment in Civil Appeal No. 2904 of 2001 in *Union of India & Anr Vs. Rajbir Singh* dated 13th Feb 2015. In this issue, a Full Bench of AFT, Principal Bench Judgment dated 01st December, 2017 passed in OA No. 1439 of 2016 in *Ex. Sgt. Girish Kumar Vs. Union of India & Ors* and other related matters has held as under:

Conclusions:-

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 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 invalided/ 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/was injury benefits since the earlier restriction on pre 01.01.2006 premature retirees has been struck down.*

The other salient conclusions are:-

(a) *Restriction of arrears can be applied to applicant(s) wherein he is not held entitled to disability/war injury element of pension, and such entitlement only gets established post adjudication by AFT/Courts; however, exception apart where the vested right of an individual is held to be denied the issue will be decided by AFT Benches on its own facts.*

(b) *All premature/voluntary retirees will remain eligible only for disability/war injury element of pension, their service element will need to be earned independently, based on years of service rendered and held as qualified for service pension.*

8. Having carefully considered the submissions made by both the parties and perused the documents, in the light of the above judgments of the Hon'ble Supreme Court as well as the Hon'ble Principal Bench of Armed Forces Tribunal, we conclude that the applicant having been discharged from service owing to the invaliding disease with 40% disability is eligible for disability pension. The applicant is also eligible for broad banding.

9. In sum, the application is allowed to the extent that the respondents are directed to grant the applicant disability pension broadbanded to 50%. The arrears, however, will be restricted to a period of three years before 09.03.2017 i.e. the date of filing of the O.A. 12 of 2017 as ordered on 22.03.2017 in MA-13 of 2017 by this Regional Bench. The respondents will pay the arrears to the applicant within a period of three months from today, failing which the applicant shall be entitled to 9% interest per annum over the arrears.

10. Original Application is accordingly allowed as indicated above.

11. There will be no order as to costs.

12. 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 point of law having general public importance, the prayer for leave to appeal to the Hon'ble Supreme Court stands rejected.

MEMBER (A)

MEMBER (J)