

**IN THE ARMED FORCED TRIBUNAL, REGIONAL BENCH,
GUWAHATI**

O.A. 77/2016

PRESENT

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

No. 4356825 K Ex-Hav Lamkhohao Kuki
Vill-K Phaicham
PO-Cheing Kompang
Dist-Churachandpur, Manipur

..... **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-1
- 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**
By legal practitioners for
Respondents.
Brig N. Deka (Retd), CGSC.

Date of hearing : 22.03.2017

Date of order : 22.03.2017

ORDER

(Per BP Katakey, Member(J))

1. The applicant has filed this application challenging the order dated 02.09.2004 whereby and whereunder the decision of the respondent authority dated 05.08.2004 has been communicated to the applicant to the effect that since the applicant has been discharged from his service on his own request on compassionate grounds, he is not entitled to disability element of the pension. The applicant has also challenged the subsequent order dated 26.09.2016 passed by the Record Officer for Records Office, Assam Regiment rejecting the claim of the applicant on the same ground apart for the ground that he having discharged from service on voluntarily retirement prior to 01.01.2006, he is entitled to the said pension.
2. We have heard Mr. AR Tahbildar, learned counsel appearing for the applicant and Brig N. Deka (Retd), learned CGSC appearing for the respondents.
3. The applicant was enrolled in service on 15.10.1983 and discharged on his own request w.e.f 01.04.2004 after putting in more than 20 years service. At the time of discharge, the applicant was found to have suffered from disablement, percentage of which was found to be 30% for life. The applicant, however, has not been granted the benefit of disability element of the pension on the ground that he was discharged from service on his own request. The applicant consistently represented before the respondent authority for grant of said benefit which was done even after the Govt. decision dated 31.01.2001. The last request made by the applicant was rejected vide communication dated 26.09.2016 stating that the benefit of disability element of the pension has not been granted to the applicant as he has voluntarily retired from service prior to 01.01.2006. This Tribunal has already set aside the aforesaid cutoff date of 01.01.2006 and held that the persons who have retired from service on his own request prior to 01.01.2006 are entitled to the benefit of the disability element of the pension.
4. In view of the above, we set aside the impugned orders and direct the respondent authority to grant the benefit of disability element of the pension @ 30%. The applicant shall also be entitled to the benefit of rounding off the said benefit from 30% to 50%, in view of the order dated 10.12.2014 passed by the Hon'ble Supreme Court in ***Union of India & Others Vs Ramavatar*** in Civil Appeal No. 418 of 2012.

5. In view of the above, the respondents are directed to grant disability element of the pension to the applicant @ 50% with arrear for a period of 03 years preceeding the date of filing the OA (OA filed on 02.01.2017) The arrear would carry interest @ 9% per annum from the said date till the date of payment. The arrear with interest shall be paid to the applicant within a period of 04 months from the date of receipt of a copy of this order.
6. OA is accordingly allowed to the extent indicated above.
7. Brig N. Deka (Retd) learned CGSC has orally prayed for leave to appeal to the Hon'ble Supreme Court which, however, has been rejected as this order does not involve any point of law of general public importance.
8. Order dasti.

MEMBER (A)

MEMBER (J)

Kalita