

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

OA 79/2016

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. 4346583K Ex-Sep Khupkholun Gangte
S/o Hengrho Gangte
Vill- Hill Town
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-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**
Legal practitioner for the
Respondents
Mr. N. Baruah, CGSC

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

ORDER

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

The applicant, through this OA, is seeking grant of disability element of pension which was denied by the respondents despite the Release Medical Board and Re-survey Medical Board having found the applicant suffering from invaliding disability "TEAR LATERAL MENISCUS KNEE (RT)" and determining the percentage of disability @ 20% and attributable to Military service. The applicant has also prayed for broad banding of the disability element of pension.

2. Learned counsel for the respondents while not disputing that the applicant is entitled to the disability element of pension @ 20% based on the findings of the Release Medical Board, submitted that subsequent to the Re-Assessment Medical Board on 12.11.1982 and 13.11.1984 at the Base Hospital, his claim for disability pension was rejected by the PCDA(P), Allahabad vide their letter dated 18.02.1985 on the ground that the disability was assessed below 20% by the Re-Assessment Medical Board.

3. Learned counsel for the respondents, placed on record the Re-Survey Medical Board dated 19.11.84 which clearly indicated Medical Board having assessed his disability for "TEAR LATERAL MENISCUS KNEE (RT)" @ 20% permanent. The Medical Board documents of 1.11.78 on record also revealed that the invaliding disability was found attributable to Military service by the Medical Board.

4. We have heard learned counsel for the applicant as well as the learned counsel for the respondents. Also perused the documents available on record along with relevant regulations.

5. It is undisputed that the applicant was enrolled in the Army on 14.02.1973 and was invalided out from service on 26.11.1978 and that the applicant's invaliding disease viz "TEAR LATERAL MENISCUS KNEE (RT)" was assessed @ 20% disability by the Medical Board held at 151 Base Hospital on 19.10.1984 and the same was declared attributable to military service vide Medical Board held at 151 Base Hospital on 01 Nov 1978 (Annexure-A).

6. The issue in hand is covered by the Hon'ble Supreme Court Judgment in Civil Appeal No. 2904 of 2001 in ***Union of India & Anr Vs. Rajbir Singh*** dated 13.02.2015. This issue is also covered by the full Bench order dated 01.12.2017 of the Principal Bench, AFT in OA No. 1439 of 2016 in ***Ex-Sgt.Girish Kumar Vs Union of India & Ors*** and related matters where it has held as follows-

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 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.*

7. In view of the above, we are of the considered opinion that the applicant is entitled to disability pension and the benefit of broadbanding.

8. In result, the OA is allowed directing the respondents to grant disability element of pension to the applicant @ 20% broadbanding the same to 50%. Further, he will be entitled to the arrears only from three years prior to the date of filing of the instant OA i.e. 28.12.2016 as ordered on 22.03.2017 in MA- 75 of 2016 by this Regional Bench.

9. The respondents shall comply with the order within 04 months from the date of receipt of the copy of this order failing which they shall pay 9% interest per annum on the entire arrears till the date of actual payment.

10. The Original Application is accordingly allowed as indicated above.

11. There will be no order as to costs.

12. Mr. N 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)

Kalita