

# IN THE ARMED FORCES TRIBUNAL

REGIONAL BENCH, GUWAHATI

OA- 38/2016.

PRESENT

HON`BLE MR. JUSTICE B.P.KATAKEY,  
OFFICIATING CHAIRPERSON  
HON`BLE LT GEN S.K.SINGH, MEMBER (A)

IC 15822 P Brigadier Nabhojyoti Deka(Retd)  
S/O. Late Holiram Deka  
57, Kali Ram Choudhury Road  
Bharalumukh, Guwahti-781009, Assam.

..... Applicant.

By legal practitioners for  
Applicant.

Ms Nayanmoni Das

-VERSUS-

1. Union of India,  
Represented by the Secretary,  
Govt. of India, Ministry of Defence  
Sena Bhawan, New Delhi – 110011.
2. Additional Directorate General  
Personnel Services , PS -4(d)  
Adjutant General's Branch  
IHQ of MOD(Army),DHQ,PO New Delhi
3. 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 : 09.11.2016  
Date of Order : 09.11.2016

### **ORDER**

**( Justice B.P.Katakey,  
Officiating Chairperson)**

Heard Ms. N.Das, learned counsel appearing for the applicant and Mr.C.Baruah, learned CGSC appearing for the respondents.

[2] The applicant has filed this application seeking the benefit of board banding of the disability element of pension by challenging the order dated 25.10.2016 passed by the Senior Accounts Officer (P), Office of the PCDA(P), Allahabad rejecting the claim of the applicant for the benefit of broad banding of disability element of the pension on the ground that since the applicant has not been invalidated out from service but superannuated from service, he is not entitled to the said benefit.

[3] The learned counsel appearing for the applicant referring to the corrigendum PPO dated 14.09.2011 has submitted that since the applicant has been granted disability element of pension @ 50%, he is entitled to the benefit of board banding of the said disability pension from 50% to 75% in view of the decision of the Hon'ble Supreme Court dated

10.12.2014 in Union of India VS Ramavatar, wherein it has been held that persons who are superannuated from service are also entitled to the benefit of the Govt. of India policy decision dated 31.01.2001. The learned counsel further submits that the applicant is also entitled to the arrear w.e.f. the date when TA 16/2010 was decided by this Tribunal i.e. w.e.f. 17.03.2011 with interest thereon.

[4] The learned counsel appearing for the respondents on the other hand supporting the impugned order dated 25.10.2016 has submitted that under the Govt. of India policy dated 31.01.2001 personnel who are invalidated out from service are entitled to the benefit of rounding off and since the applicant was not invalidated out from service he has rightly been denied the benefit of rounding off. The learned counsel further submits even assuming but not admitting that the applicant is entitled to the benefit of rounding off, arrear cannot be paid w.e.f. 17.3.2011 i.e. the date on which the aforesaid TA was decided by this Tribunal, as the applicant has for the first time has claimed the said benefit by filing a representation dated 22.09.2016, which has been rejected vide order dated 25.10.2016.

[5] We have considered the arguments advanced by the learned counsel for the parties and also perused the pleadings in the OA.

[6] It is not in dispute that the applicant is in receipt of disability element of pension @ 50% w.e.f. 01.04.1998. The Govt. of India has adopted a policy decision which has been circulated on 31.01.2001 for granting the benefit of disability element of pension in respect of personnel who are invalidated out from service.

[7] The said decision came to be challenged before various benches of this Tribunal. Against the decision of this Tribunal granting the benefit to persons superannuated from service or premature retiree, the Union of India filed an appeal before the Hon'ble Supreme Court which has been dismissed by order dated 10.12.2014 passed in Ramavatar (Supra). In the said order the Hon'ble Supreme Court has observed that dismissal of civil appeals filed before the Hon'ble Supreme Court would be taken note of by the Hon'ble High Court as well as Tribunal for grant of appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.

[8] That being the position, premature retiree as well as persons who are superannuated from service are also entitled

to the benefit of rounding off disability element of pension as per Govt. of India Policy decision dated 31.01.2001.

[9] The Senior Accounts Officer (P), Office of the PCDA (P) Allahabad ,however, has passed the impugned order dated 25.10.2016 rejecting the claim of the application despite the aforesaid order passed by the Hon'ble Supreme Court. The said impugned order dated 25.10.2016, therefore, cannot stand the scrutiny of law and hence, it is set aside.

[10] The applicant is entitled to the benefit of rounding off of the disability element of pension from 50% to 75% in terms of the aforesaid order passed by the Hon'ble Supreme Court in Ramavatar ( supra) read with Govt. of India policy decision dated 31.1.2001.

[11] The next question which requires determination is whether the applicant is entitled to the arrear w.e.f 17.03.2011 i.e. the date when the TA No.16/2011 was decided by this Tribunal whereby and whereunder a direction was issued to the respondent authorities to grant disability element of pension @ 50%, which was initially denied to the applicant.

[12] In the said TA the applicant never asked for the benefit of board banding of the disability element of pension. The applicant for the first time claiming the said benefit had filed

representation on 22.09.2016 which, however, has been rejected vide order dated 25.10.2016. The applicant is, therefore, in our considered opinion, would be entitled to arrear for 3 years preceding the date of filing of the said representation i.e. 22.09.2016.

[13] The Respondents are, therefore, directed to pay the applicant the benefit of rounding off the disability element of pension from 50% to 75% with arrear for 3 years preceding 22.09.2016. The arrear would carry interest @ 9% per annum from the said date till the date of payment. Arrear with interest shall be paid to the applicant within a period of four months from the date of receipt of a copy of this order.

[14] OA is accordingly allowed. No costs.

[15] Mr.C.Baruah, learned CGSC appearing for the respondents has made an oral prayer to grant leave to appeal to Hon'ble Supreme Court. 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)**

**OFFICIATING CHAIRPERSON**

mc



