

## IN THE ARMED FORCES TRIBUNAL

REGIONAL BENCH, GUWAHATI.

OA- 06/2017.

PRESENT

HON'BLE DR(MRS) JUSTICE INDIRA SHAH, MEMBER(J)

HON'BLE LT GEN C.A.KRISHNAN, MEMBER(A)

No.13886048W

Ex Nk Wango Wangdil Anal

Village Tampi, PO Chakpikarong,

Dist. Chandel, Manipur.

..... **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. ASC Records (South)  
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.N.Baruah,CGSC

Date of Hearing : 20.02.2018  
Date of Order : **23.02.2018**

### **ORDER**

*(Dr)Mrs.Shah,J)*

Heard Mr.A.R.Tahbildar, learned counsel appearing for the applicant and Mr.N.Baruah, leaned CGSC appearing for the respondents.

[2] The facts leading to filing of this OA, in short, are that the applicant herein was enrolled in the Indian Army as Sepoy on 10.10.1982 after being found physically and mentally fit. While he was in service, in the month of October,1996 he was diagnosed with "Sensori Neural Heading Loss" and subsequently thereafter, he was placed in Permanent Low Medical Category H2(P) on 01.11.2004 by the Release Medical Board held on 23.4.2004 showing the degree of his disability to 20% for life thereby recommending his discharge from service. The applicant was discharged from service on completion terms of engagement for 22 years in Low Medical Category on 01.11.2004.

[3] The grievance of the applicant is that after his retirement on superannuation he was denied disability element of pension by the respondent authority vide letter dated 09.05.2005 on the

ground that the disease "Sensori Neural Heading Loss" is neither attributable to nor aggravated by military service. The applicant preferred 1<sup>st</sup> and 2<sup>nd</sup> appeals against rejection of his disability element of pension but both the appeals were rejected by the respondent authority on 09.11.2006 and 12.06.2008 respectively. In the month of April 2016, the applicant approached the office of the ESM Pension Grievance Cell C/O/57 Mtn Div Signal Regiment C/O.99 APO with a representation praying for grant of disability element and rounding off the benefit thereof. His representation was forwarded to the ASC Records (South) and the ASC Records (South) vide letter dated 26.04.2016 intimated to the ESM Pension Grievance Cell that since the disability " Sensori Neural Heading Loss" was recorded as neither attributed to or aggravated by military service, the applicant is not entitled to disability of pension.

[4] It is not disputed at bar that the applicant's enrolment in the Armed Forces was after medical examination being found physically and mentally fit.

[5] It is submitted by the learned counsel for the applicant that as per Rule 4 of the Entitlement Rules for Casualty Pensionary Award 1982, invalidation from service is a necessary condition for grant of disability pension. As per this Rule, a

person who is in Low Medical Category to which he was recruited will be treated as invalid from service.

[6] The respondents in their counter affidavit have averred that the applicant was enrolled in the Army on 10.10.1982 with the term of engagement for 17 years in colour service and 2 years in reserve. The applicant was placed in Low Medical Category w.e.f. 12.10.1996 for his disability "Sensori Neural Heading Loss". He continued his service in Low Medical Category under the shelter appointment till completion of his terms of engagement. He was discharged from Military Service w.e.f 31.10.2004 on completion of his term of engagement as disability "BILATERAL SENSORI NEURAL HEARING LOSS BOTH EARS" was neither attributable to nor aggravated with military service. The percentage of disability assessed is 20% for life.

[7] The Pension Regulations in the Army 1961 and the Regulations 173 provided provides for grant of disability pension and reads as follows :

" 173 Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20 per cent or over. The question whether a

disability is attributable to or aggravated by military service shall be determined under the Rule in Appendix II."

[8] In the case of Union of India and another Vs. Rajbir Singh (Civil Appeal No. 2904 of 2011, the Hon'ble Apex Court relying on Dharamvir Singh Vs. Union of India and Ors (2013) 7 SCC 316 observed as follows :

"15.....The essence of the rules, as seen earlier, is that a member of the armed forces is presumed to be in sound physical and mental condition at the time of his entry into service if there is no note or record to the contrary made at the time of such entry. More importantly, in the event of his subsequent discharge from service on medical ground, any deterioration in his health is presumed to be due to military service. This necessarily implies that no sooner a member of the force is discharged on medical ground his entitlement to claim disability pension will arise unless of course the employer is in a position to rebut the presumption that the disability which he suffered was neither attributable to nor aggravated by military service. From Rule 14(b) of the Entitlement Rules it is further clear that if the medical opinions were to hold that the disease suffered by the member of the armed forces could not have been detected prior to acceptance for service, the Medical Board must state the reasons for saying so. Last but not the least is the

fact that the provision for payment of disability pension is a beneficial provision which ought to be interpreted liberally so as to benefit those who have been sent some with a disability at times even before they completed their tenure in the armed forces.....”

[9] The element of disability of the applicant at the time of his discharge being 20% and in view of the settled position of law, we are of the opinion that the applicant was eligible for grant of disability pension at the time of his discharge from service. The issue relating to grant of benefit of rounding off of disability element of pension to the personnel who have been discharged on completion of tenure is no longer *res integra* in view of the judgment passed by the Hon'ble Supreme Court in Union of India Vs. Ram Avatar Hon'ble Apex Court in Civil Appeal No. 418 of 2012 .

[10] We, therefore, hold that the applicant is entitled to the benefit of broad banding of disability element of pension. Respondents are directed to grant broad banding of disability element of pension to the applicant from 20% to 50% with arrears from 3 years preceding the date of filing of the OA i.e. 07.02.2017 as per order dated 24<sup>th</sup> March, 2017 in MA-07-2017 of this Regional Bench. The respondents will pay the arrears within 3 months of receipt of this order, failing which, the

arrears will carry interest @ 9% per annum till the date of payment.

[11] The OA is accordingly allowed as indicated above.

[12] There will be no order as to costs.

**MEMBER(A)**

**MEMBER(J)**

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