

IN THE ARMED FORCES TRIBUNAL REGIONAL BENCH,
GUWAHATI.

OA 55/2017

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. 14702713M NK (TS)
Letzamang
Village- Ngangkhareikai
PO-Moirang
Dist-Bishnupur (Manipur)
Pin-795133

..... **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 Kumaon Regiment
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. The Principal Controller of Defence
Accounts (Pension), Allahabad
PIN-211014
Uttar Pradesh

..... **Respondents**
Legal practitioner for the
Respondents
Brig.N.Deka (Retd.) CGSC

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

O R D E R

Per Lt Gen C A Krishnan, Member (A)

This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, praying for grant of Broad Banding benefit of disability pension to the applicant. The applicant was enrolled into the Indian Army on 24.02.1991 and was discharged from service w.e.f. 01.03.2008 in Low Medical Category due to an injury sustained while in service. On discharge from service, he was granted 30 % War Injury Element of pension by the Release Medical Board, but rounding off benefit was not granted to him.

2. Mr.A.R.Tahbildar, learned Counsel appearing for the applicant referring to the PPO NO.D/B/115/2008 (Annexure-B), has submitted that since the applicant had been discharged with disability which has been declared as War Injury, he is entitled to Broad Banding benefit in terms of the order passed by the Hon'ble Supreme Court on 10.12.2014 in Civil Appeal NO.418 of 2012 in Union Of India & Ors. Vs. Ram Avatar. The learned Counsel submitted that direction needs to be issued to the respondents to grant Broad Banding of disability element of pension from 30 % to 50 % with arrears thereon.

3. Learned Central Govt. Standing Counsel appearing for the respondents while not disputing the facts given out in the PPO and the grant of 30 % War Injury Element of disability pension to the applicant, has submitted that rounding off benefits are applicable only to those who have been invalidated out/discharged from service before fulfilment of their terms of engagement. Since the applicant was discharged from service on completion of his term of engagement, the said benefits are not applicable to him.

4. We have heard Mr.A.R.Tahbildar, learned Counsel appearing for the applicant as well as Brig. N.Deka (Retd.), learned CGSC, appearing for the respondents and perused the documents on record.

5. Since it is a case of Broad Banding from 30 % to 50 % and the documents connected to the instant application are not refuted by the respondents, we are proceeding to dispose of the case after hearing both the sides

6. It is not in dispute that the applicant was enrolled in the Army on 24.02.1991 and was discharged from service w.e.f. 01.03.2008 on completion of terms of engagement in Low Medical Category with 30 % disability declared as War Injury. The individual is in receipt of 30 % disability pension w.e.f. 01.03.2008.

7. The issue relating to grant of rounding off benefit of disability element of pension is no longer res- integra. A full Bench of Principal Bench, AFT, vide order dated 01.12.2017, passed in OA 1439/2016 Ex Sgt. Girish Kumar Vs. UOI & 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/war injury benefits since the earlier restriction on pre 01.01.2006 premature retirees has been struck down.*
- (iii) *In all cases at (i) and (ii) preceding, there will be no restriction of three years on arrears and arrears will be paid according to eligibility (as stated preceding).*

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. That being the position, we are of the considered opinion that the applicant is entitled to the benefits of Broad Banding disability element of pension.
9. In view of the above, respondents are directed to pay the benefits of Broad Banding of disability element of pension to the applicant from 30 % to 50 %. The respondents are further directed to make payments of the arrears w.e.f. 01.03.2008 within 4 (four) months from today, failing which, the arrears shall carry interest @ 9 % per anum till the date of actual payment.
10. With these directions, the OA is accordingly allowed and disposed of.
11. No Costs.
12. 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 it does not involve any point of law of general public importance.

MEMBER (A)

MEMBER (J)

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