

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.132 of 2014

Wednesday, the 26th day of August 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Col (Retd) CN Reddy, IC 35927
S/o Late C. Adi Reddy
aged 56 years, R/o Plot No.38
Phase-II, Bhanu Enclave
Yapral, Secunderabad-87.

.. Applicant

By legal practitioner:
Ms. Tonifia Miranda

vs.

1. The Union of India,
Rep. by its Secretary
The Government of India
Ministry of Defence, New Delhi-11.

2. The Chief of the Army Staff
Army Headquarters, DHQ Post
New Delhi-11.

3. Adjutant General's Branch
Integrated HQ of Ministry of Defence (Army)
Dte Gen of Med Services/MRPS (O)
"L" Block, New Delhi-110 066.

4. The Principal Controller of
Defence Accounts (Pensions),
Allahabad, Uttar Pradesh, Pin-211 014.

.. Respondents

By Mr.S. Haja Mohideen Gisthi
SCGSC

ORDER

(Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiah, Member (Judicial))

1. This application is filed by the applicant for the relief that the premature retirement of the applicant be construed as invalidation as per AO 43 of 1978 and to confer the applicant the eligibility of the invaliding benefits and to grant disability pension from 20.07.2004 with broadbanding of 20% disability rounded off to 50% with effect from 21.07.2004 and also to grant relief from AGIF at 20% of Rs.8 lakhs and also to grant relief of Rs.8 lakhs for undergoing trauma and harassment and for costs.

2. The factual matrix of the applicant's case would be as follows:

The applicant was commissioned as an officer in the Indian Army on 09.06.1979. He underwent Young Officers Course in the month of February 1980 to June 1980 at Belgaum Infantry School. During the Commando leg of the course, the applicant was severely injured in a night navigation exercise. He took treatment for a

severe sprain to his right ankle and his backbone for more than three (3) years and subsequently, he underwent a surgery in October 1983 for Lumbar Canal Stenosis at Command Hospital (SC), Pune. The applicant was placed in Low Medical Category from 15th July 1985 and was continued in Low Medical Category for 15 years during his services. Despite the disability and medical condition, the applicant became Colonel, but thereafter he could not be promoted to any higher rank due to his permanent Low Medical Category. The applicant was constrained to seek premature retirement from Indian Army on 20.07.2004. Release Medical Board was conducted and even though the disability was opined as attributable to or aggravated by military service, the applicant was not granted disability pension for the reason that he proceeded on premature retirement. The VI Central Pay Commission had recommended for the grant of disability pension to the service pensioners seeking PMR, but it is interpreted that the personnel who prematurely retired after 01.01.2006 alone would get the benefit which is not correct. The Principal Bench has categorically found that it would be applicable to pre-01.01.2006 retirees also by striking out Para-3 of the letter dated 29.09.2009. The Release Medical Board opined that the disability was aggravated by service. The application filed in O.A.No.105 of 2013 before this Tribunal was

disposed of with the direction to exhaust the remedy available before the respondents. Accordingly, the applicant filed an appeal. However, the appeal was not disposed of within the stipulated time and therefore, the present application has been filed by the applicant. The applicant is also entitled to the benefit of broadbanding as per the letter of Government of India dated 31.01.2001. Therefore, the applicant be granted with disability pension duly broadbanded from 20% to 50% and thus to allow the application.

3. The objections raised by the respondents would be as follows:

The enrolment of the applicant as an officer in the Army on 09.06.1999 and after due service, he was prematurely retired from service on 20.07.2004 are admitted. During his service, the applicant was affected by a disease, "Lumbarcanal Stenosis (OPTD) Old ZO.90" which was aggravated by military service and was assessed at 20% for life have also been admitted. The Government policy letter dated 29.09.2009 was issued and it would be applicable to the retirees after 01.01.2006 and the applicant proceeded on premature retirement with effect from 20.07.2004 and therefore, contents of the said letter is not applicable to him. The provisions of Para-48 of the Pension Regulations for the Army 1961 Part-I

would also not be beneficial to the applicant which says that the personnel should have been invalidated out from the service for the purpose of getting disability pension. Para 50 of the Pension Regulations for the Army 1961, Part-II would deny the premature retirees the grant of disability pension. The judgment of the Hon'ble Supreme Court in **State of Punjab vs. Justice SS Dewan (1997) 4 SCC 569** is squarely applicable where it is laid down that whenever a retirement benefit is conferred a cut-off date could be fixed by the Government and the said judgment was not brought to the notice of the Hon'ble Apex Court while delivering the judgment made in the case of **KJS Buttar**. Therefore, the judgment of Justice **SS Dewan's case** would also be applicable to the present case. The claim of the applicant for broadbanding the disability as per the policy letter dated 31.01.2001 could not be granted since the applicant was a premature retiree prior to 01.01.2006 and the said entitlement is not also available. The judgment in the case of **Ram Avtar** pronounced by the Hon'ble Apex Court would not also apply to the present case since the applicant is a premature retiree. Therefore, the application filed by the applicant may be dismissed.

4. On the above pleadings, we find the following points emerged for consideration:

(1) *Whether the applicant being a premature retiree on 20.07.2004 is entitled to the benefit of the letter dated 29.09.2009 conferring disability pension to the premature retirees?*

(2) *Whether the applicant is entitled to disability pension at 20% from the date of implementation of the said letter dated 29.09.2009 and the said disability is liable to be broadbanded to 50%?*

(3) *Whether the applicant is entitled for AGIF at 20% of Rs.8 lakhs?*

(4) *Whether the applicant is entitled to an interest at 24% per annum on the arrears amount payable to the applicant, if any?*

(5) *Whether the applicant is entitled for compensation of Rs.8 lakhs?*

(6) *To what relief the applicant is entitled?*

5. We heard the arguments of Ms. Tonifia Miranda, learned counsel for the applicant and Mr. S.Haja Mohideen Gisthi, learned SCGSC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for the respondents.

6. **Point Nos.1 and 2:** The indisputable facts in this case are that the applicant was granted commission in the Army on 09.06.1979 and prematurely retired from service on 20.07.2004 (AN) and at the time of his retirement, he was placed in Low Medical Category S1H1A1P2(P)E1 and the disability was conceded as aggravated by service at 20% for life. The applicant has claimed that the grant of disability pension was rejected on the sole ground of his premature

retirement by stating the reasons that it was barred by several provisions of Pension Regulations for the Army including Para-50. The respondents would contend that the Government had conceded the grant of disability pension to those premature retirees as per the recommendations of VI Central Pay Commission and accordingly, a letter was issued on 29.09.2009 and it is applicable only to the retirees who retired from service, on superannuation or voluntary/premature retirement, on and after 01.01.2006 and therefore, the applicant is not entitled to the grant of disability pension, as he was discharged on 20.07.2004.

7. The rival contentions of the parties have been discussed in number of cases by this Tribunal and we found that the letter dated 29.09.2009 issued by Government of India was applicable to both pre and post-01.01.2006 retirees.

8. As per the discussions held in those cases, we find that it is an admitted fact that the Government had changed its policy to grant disability pension even for the premature retirees, if their disability is attributable to or aggravated by military service and the only condition that was made is that the retirees should have retired on and after 01.01.2006. Therefore, we have to see whether the benefit given under the Policy Letter of the Government of India, dated 29.09.2009

is applicable to the applicant for the grant of disability pension for the ID which is admittedly aggravated by military service.

9. The judgment of Hon'ble Principal Bench made in the case of **Maj (Retd) Rajesh Kumar Bhardwaj vs. Union of India & Others** in **O.A.No.336 of 2011 dated 7.2.2012** would be useful for deciding this case. The relevant paragraphs are as follows:

" Now coming to the facts of the present case, notification dated 29.09.2009 has been issued for giving benefit to the persons who have sought voluntary retirement as earlier it was not possible to be given because of the Regulation 50. Regulation 50 contemplates that no person shall be entitled to disability pension if he sought voluntary retirement. But this was watered down by issuing notification dated 29.09.2009 which reads as under;

*" No.16(5)/2008/D(Pen/Policy)
Government of India
Ministry of Defence
Deptt.Of Ex-Servicemen
Welfare*

New Delhi 29th Sept. 2009

To

*The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff*

Subject: Implementation of Government decision on the recommendation of the Sixth Central Pay Commission-Revision of provisions regulating Pensionary Awards relating to disability pension/war injury pension etc. for the Armed Forces Offices and Personnel Below Officer Rank (PBOR) on voluntary retirement/discharge on own request on or after 1.1.2006.

Sir,

The undersigned is directed to refer to Note below Para 8 and para 11 of the Ministry's letter No.1(2)/97/D(Pen-C) dated 31.1.2011, wherein it has been provided that Armed Forces personnel who retire voluntarily or seek discharge on request shall not be eligible for any award on account of disability.

2. In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.1969 of their Report, President if pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntary or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.

3. The provisions of this letter shall apply to the Armed Forces personnel who are retired/discharged from service on or after 1.1.2006.

4. Pension Regulations for the three Services will be amended in due course.

5. This issue with the concurrence of Ministry of Defence (fin.) vide their U.O.No.3545(fin/Pen) dated 29.09.2009.

6. Hindi version will follow.

*Yours faithfully,
(Harbans Singh)*

Director/Pen/Policy)
Copy to:-
As per standard list.”

As per this notification, the benefit has been extended to the Armed Forces personnel as mentioned in paragraph no.2 of this notification but in paragraph no.3, they have said that this will be applicable from 01.01.2006, i.e. the persons who have sought voluntary retirement on or after 01.01.2006 will be benefited and rest will not be benefited. Petitioner has retired prior to 01.01.2006, therefore, he has been denied the benefit on account of cut-off date as per notification dated 29.09.2009.

*Learned counsel for the respondents has seriously contested before us that Government has financial constraints, therefore, this benefit cannot be extended uniformly to the persons who sought voluntary retirement prior to 01.01.2006. In this connection, learned counsel for the petitioner has invited our attention to the subsequent notification dated 03.08.2010 of PBOR which reads as under;
'Tele-23335048*

*Addl Dte Gen Personnel Services
Adjutant General's Branch*

*Integrated HQ of MoD (Army)
DHO PO, New Delhi 110011
B/39022/Mis/AG/PS-4 (L)/BC*

*All Legal Cells
All line Dtes*

*GRANT OF DISABILITY PENSION TO PREMATURE
RETIREMENT CASES PROCEEDING ON DISCHARGE PRIOR TO
01 JAN 2006*

- 1. Further to this office note No.A/39022/Misc/AG/PS-4(Legal) dt 22 Feb 2010 on subject matter.*
- 2. It is clarified that as and when a pre-2006 retiree PBOR files a court case to claim disability pension which was denied to him merely because he had proceeded on Premature Retirement, such cases will be immediately processed for Government Sanction through respective Line Dtes and Not contested. Government Sanctions in which cases will also be proposed in the same manner as that followed in cases of Government Sanctions issued in compliance of court cases.*
- 3. This arrangement will be effective till MoD/D(Pen/Legal) formulated and issues comprehensive Govt orders.*
- 4. It is reiterated that only those cases where disability pension was denied to a PBOR solely on the grnds that he had proceeded on PMR will be processed for sanction and will not be contested. Which implies that as and when a PBOR*

files a case of similar nature their case files will be processed for Govt sanction without awaiting court order.

5. *Contents of this letter are not applicable to officers as PRA, Rule 50 has been upheld by Hon'ble Supreme Court in judgment dt 06 July 2010 in case of Lt Col Ajay Wahi (SLP No.25586/2004, Civil Appeal No.1002/2006).*

7. *All line Dtes are requested to give vide publicity to this letter amongst all Record Offices.*

*(Ajay Sharma)
Col
Dir, Ag/PS-4(Legal)
For Adjutant General*

*Copy to:
MoD/D(Pen/Legal)
JAG Deptt'*

It has been clarified that as and when a pre-2006 retiree PBOR files a court case to claim disability pension which was denied to him merely because he had proceeded on Premature Retirement, such cases will be immediately processed for Government sanction through respective Line Dtes and not contested Government sanctions in which cases will also be processed in the same manner as that followed in cases of Government sanctions issued in compliance of court cases. That means Government has relaxed the condition for the PBOR, even if they sought voluntary retirement prior to 2006 they will not be denied the benefits of disability pension

as per rules. If the Government can show benevolence for PBOR then why not same benefit can be given to the officers who are far less in number than PBOR.

The plea of the respondents of financial constraints is exploded. The number of PBOR who sought voluntary retirement pre-2006 would be hundred times more than that of officers. Therefore, we think that plea taken by the Government of financial constraints is nothing but an afterthought to somehow justify the administrative action. When this benefit has been extended to PBOR, we see no reason why it should not be released to the officer. More so, the justification of financial constraints pleaded by the respondents is exposed on account of that they have released the benefit to the PBOR which are larger number than that of officer. Therefore, in our opinion, this artificial distinction which has been sought to be made of pre and post 01.01.2006 is without any rational basis. It is only a ploy to deprive the benefits of disability pension to the officers' rank.

Hence, we strike down the Clause 3 of the notification dated 29.09.2009. It will be open for the petitioner to make their representations to the authority to seek the disability pension benefit in terms of the aforesaid circular and Government will examine the matter and pass appropriate orders in accordance with law. "

10. The aforesaid judgment of Hon'ble Principal Bench would clearly indicate that there is no difference between post-01.01.2006 retirees and pre-01.01.2006 retirees in the case of officers also. A copy of the order of the Hon'ble Supreme Court produced in C.A.No.31811 of 2013 preferred against the above said judgment of the Hon'ble Principal Bench as referred supra was found dismissed as barred by limitation in the order dated 24.3.2014. Therefore, the judgment of Hon'ble Principal Bench made in **O.A.No.336 of 2011 [Maj (Retd) Rajesh Kumar Bhardwaj vs. Union of India & Others]** would hold the field and is applicable to the present case. Consequently, the applicant in the said case was granted disability pension following the judgment of the Hon'ble Principal Bench made in **[Maj (Retd) Rajesh Kumar Bhardwaj vs. Union of India & Others]** who went on premature retirement on 20.07.2004 being a pre-01.01.2006 retiree and he should have been granted with the award of disability pension on the disability of 20% sustained by him as aggravated in military service. In the impugned order, it is simply stated that the applicant is not eligible for disability element of pension because he proceeded on voluntary retirement at his own request as per Para 50 of Pension Regulations for the Army, Part-I. Therefore, we could find that the reasoning given in the impugned

order is arbitrary and it is not sustainable. Therefore, we are of the considered view that the applicant is entitled for the disability pension and the denial of the same by the respondents is not sustainable.

11. As regards the broadbanding relief sought for by the applicant, we find that the relief of broadbanding was found entitled to the personnel who retired on superannuation or completion of term of engagement by Hon'ble Apex Court in the judgment rendered in **Ram Avtar's** case. The said judgment was applied by Hon'ble Apex Court in a case between **UOI vs. Dayaram & others in Civil Appeal No.1835 batch case** and the order of AFT Regional Bench, Chandimandir dated 03.08.2012 made in O.A.No.1960 of 2012 between **Ved Prakash vs. UOI & Ors case** was upheld. In the order passed in Ved Prakash cases, the scope of the applications are described hereunder:

" The necessary facts, which are common, in all these cases are, that the petitioners, hereinafter to be referred to as the "individuals" were discharged from Army service, whether by way of retirement, superannuation, voluntary discharge, or discharged under any other provisions of the Army Rules or Army Act, and at the time of discharge, they were carrying disability, attributable to or aggravated by military service, and to the extent of not less than 20% with the

difference that some of the individuals in this bunch are the persons, who were so discharged prior to 01.01.1996, and in other matters, they were discharged after 01.01.1996. These individuals claim to be entitled to the benefit of "rounding off" or "broad-banding", as introduced by the Government of India vide letter dated 31.01.2001, read with the letters issued from time to time subsequently, enlarging the scope thereof. In terms of the letter dated 31.01.2001, it applied to only those persons, who were in service as on or after 01.01.1996, and did not apply to others, which gave rise to a spate of litigation all around, which litigation finally culminated in favour of the individuals, by concluding, that the benefit is available to all individuals, irrespective of the fact that they were in service on 01.01.1996 or not. "

12. On a careful reading of the scope of these applications we have to find as to whether the personnel, who were placed under low medical category and whose services were cut due to such categorization be deemed as invalided from service. The said circumstance was considered in the said judgement rendered by **AFT Regional Bench, Chandimandir, in O.A.No.1960 of 2012**. The relevant passage in the said judgment would run as follows :-

"A reading of the above provisions does clearly show that "Broad-banding" was never intended or desired to be confined to any particular category or categories of persons only. It was intended for universal application across the spectrum. If the object sought to be

achieved was to eliminate subjectivity in assessing percentage of disability and to rationalize the scheme, then it is difficult to see how this objective is to be achieved by application to only those whose tenure is cut short and not for those who complete their tenure. We may also note that the Pension Regulations promulgated in 1961 were made applicable from 1954 and till the 5th Pay commission there was no difference in the compensation based on the percentage of attributable disability. Broad banding if implementing only for those whose tenure was cut short would create two classes from an existing homogeneous class. Differentia must have a rational relation to the object to be achieved and classification must be founded on intelligible differentia which distinguishes one class from the other. We see no rational or intelligible basis of creating such classification in the matter of broad banding.

*Thus for the above reasons, it is our considered opinion that the view taken by Hon'ble Supreme Court in **K.J.S. Buttar's case** addresses the issue comprehensively and is required to be followed by us. A number of judgments have been cited by the counsel on either side on the aspects as to when the judgment can be said to be a judgment sub-silentio or per in curium, or when does it not have a value of precedent, or when it is not required to be followed. However, we need not go into all these aspects for the simple reason, that we are only faced with the situation of two conflicting judgment of the Hon'ble Supreme Court, rendered by the Benches comprising of identical number of Hon'ble Judges and are left with no choice but to choose one of them, and that unpleasant and uphill task we have tried to perform.*

*Thus having considered all aspects, we conclude that the claims of the petitioners are held to be covered by the ratio in **K.J.S. Buttar's case**, and they are held entitled to the same reliefs as granted in **K.J.S. Buttar's case**. The effective date of accrual of benefits would*

be as read with the judgment of this Tribunal dated 22.12.2011 passed in O.A.No.1370 of 2011 Labh Singh Vs. U.O.I."

13. For the discussion held above, we are of the considered opinion that the applicant is entitled to the disability pension with effect from 01.01.2006 as per the letter of Government of India dated 29.09.2009 conferring disability pension to the premature retirees and consequently, the applicant is entitled for broadbanding of disability pension from the said date, i.e., the date of entitlement. Accordingly, both the points are decided in favour of the applicant.

14. **Point No.3:** It is contended by the learned counsel for the applicant that the applicant was not paid with AGIF at the time of his discharge. The AGIF is the money paid by the applicant during the time of his service and he is entitled to the said payment at the time of his discharge. The present claim of the applicant is the money payable on the disability suffered by the applicant. The applicant has not quoted any rule for the grant of such AGIF money towards the disability nor impleaded the right person to answer the claim would be the AGIF who was not impleaded in this application. Therefore, we find that the applicant has not substantiated his claim for the AGIF for which he can separately pursue the claim before the right person, viz., AGIF and if at all any cause of action accrues

thereafter, he can approach this Tribunal. Accordingly, this point is also answered.

15. **Point Nos.4 and 5:** The applicant has sought for payment of arrears at 24% per annum. The entitlement of the applicant was arrived at on the basis of the judgment of the Hon'ble Principal Bench as well as the judgment of the Hon'ble Apex Court pronounced recently after the issuance of the Government of India letter dated 29.09.2009. In the said circumstances, the respondents are not responsible for not paying the amount immediately on the issuance of such entitlement. Similarly, the entitlement of the applicant was conferred on the basis of a letter of Government of India and as per the judgment of the Hon'ble AFT Principal Bench, New Delhi and Hon'ble Apex Court and therefore, the mental trauma and other sufferings could not be due to the respondents and therefore, the compensation prayed for by the applicant is also not sustainable. Furthermore, the claim of the applicant at 24% is highly exorbitant and usurious and on that count also, we are not accepting the claim of the applicant. These points are accordingly decided against the applicant.

16.Point No.5: In the result, the application is allowed in respect of the grant of disability pension in favour of the applicant with

effect from 01.01.2006 as per GOI MOD letter dated 29.09.2009 at 20% duly broadbanded to 50% and in other respects, the application is dismissed. The respondents are directed to issue PPO in favour of the applicant and to pay the arrears of disability pension payable till this date within a period of three (3) months. Failing to comply, the respondents are liable to pay the arrears with interest at 9% per annum till the date of realization. No order as to costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

26.08.2015
(True copy)

Member (J) – Index : Yes/No
Member (A) – Index : Yes/No
vs

Internet : Yes/No
Internet : Yes/No

To:

1. The Secretary
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Ministry of Defence, New Delhi-11.
2. The Chief of the Army Staff
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5. Ms. Tonifia Miranda
Counsel for applicant
6. Mr. S. Haja Mohideen Gisthi, SCGSC
For respondents.
7. OIC, Legal Cell,
ATNK & K Area, Chennai.
8. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

O.A.No.132 of 2014

Dt: 26.08.2015