

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.33 of 2014

Thursday, the 16<sup>th</sup> day of October 2014

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

AND

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

Lt Col (Retd) Catherine George  
W/o George Andrew  
(Service No.NR 16903F)  
aged 55 years  
Flat No.49, Jambuli New Colony  
Kodungaiyur, Chennai-600 118.

.... Applicant

By Legal Practitioner:  
Mrs. Tonifia Miranda

vs.

1. Union of India  
rep. by its Secretary  
Ministry of Defence  
New Delhi-11.

2. The Chief of Army Staff  
Army HQ  
DHQPO, 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. Commanding Officer  
INS Rajali  
Arakonam.

5. The Principal Controller of  
Defence Accounts  
Office of PCDA (Pensions)  
Allahabad, Uttar Pradesh  
Pin-211014.

....Respondents

By Mr. B.Shanthakumar, SPC

### **ORDER**

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

1. This application is filed by the applicant against the impugned orders No.NR-16903/MPRS(O)/NE, dated 7<sup>th</sup> January 2014 and NR-16903/MPRS(O)/NE, dated 28<sup>th</sup> April 2004 to quash the same as illegal and arbitrary and consequently to award disability pension by effecting broad banding from 40% to 50% and Disability Benefit Cover under the Army Group Insurance Fund and also for a direction to pay the arrears from the date of retirement, i.e., 31.08.2001 till this date along with interest at 9% per annum.

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

The applicant was commissioned in the Indian Army Military Nursing Services on 31.12.1979 at INHS ASHVINI, Mumbai as Lieutenant after strenuous training. After serving in the Military Hospitals in Bihar, Assam and Nagaland from the year 1985 to 1995, she was promoted to the rank of Lieutenant Colonel on 30.12.1999 at INS Rajali, Arakonam. The applicant served for 21 years and 8 months in the army. While she was posted at Zakhama, a field area to participate in OP ORCHID, she developed health problems. When she was serving in Jabalpur, she was referred to Initial Categorisation Medical Board and on 19.07.1999 wherein it was opined that she was suffering from "Cervical Spondylosis", that the disability was contracted in service, that it was aggravated by service and that she was placed on low Medical Classification P3 (T-24) for 24 weeks. Subsequently, by the Board's opinion dated 28.01.2000, the applicant was placed in low medical classification A.3 for 20 weeks for the principal disability "Chondromalacia Patellae" and "Cervical Spondylosis" with PID C5-C6 for which she was placed on A3 for 24 weeks. It was opined by the Medical Board that the disability was contracted in service over which the applicant had no control and the disability was aggravated due to physical stress and strain in military service. Further, the Medical Board on 03.07.2000 placed the applicant in medical classification A.3 for 24 weeks on account of the

disability "low back ache" with PID L4-L5 and A3 (P) for other disabilities. As per the recommendation, she was exempted from physical training and the disability was assessed as a composite assessment of 40% disability for life.

4. Therefore the applicant sought for premature retirement and the same was approved by an order dated 17<sup>th</sup> May 2001 and accordingly on 31<sup>st</sup> August 2001, she retired prematurely. The applicant's claim for disability pension was rejected by the order dated 07.01.2002 of the 2<sup>nd</sup> respondent by stating that the disabilities were not attributable to or aggravated by military service. She preferred an appeal and since there was no reply to the appeal, she again forwarded the copy of appeal vide letter dated 30.04.2003 to the respondents. However, the 2<sup>nd</sup> respondent issued the impugned order dated 28<sup>th</sup> April 2004 rejecting the claim of the applicant for disability on a new ground that the applicant had gone on premature retirement at her own request. Those reasons given by the respondents are not sustainable. The applicant contracted the disability during the course of employment and that the disability is totally attributable to and aggravated by the environmental factors which were not conducive to the applicant due to the stress and strain in field area operation. Therefore the applicant seeks for grant of disability pension from the date of her retirement.

5. The objections raised by the respondents in their reply statement would be as follows:

The respondents would submit that the applicant sought for voluntarily retirement, that the same was approved and she retired from the army service with effect from 31<sup>st</sup> August 2001. At the time of retirement, the applicant was in low medical category A3 (Permanent). As per para 50 of Pension Regulations for the Army 1961, an officer who retires voluntarily shall not be eligible for grant of disability pension. Though the respondents admit the disabilities sustained by the applicant, the place of origin of such disabilities are not accepted. At the time of release, the applicant was in low medical category, hence a Release Medical Board was held at MH Chennai on 17<sup>th</sup> July 2001 and the Medical Board quantified the disability at 40% for life. The applicant was posted to field/peace units according to the requirement of service conditions and the turnover policy. The applicant served the army for 21 years and 8 months and she is in receipt of service pension for her service in army vide PPO No.M/003980/2001. The Government fixed the cut-off date as 01 January 2006 as effective date for grant of disability pension to the officers who have proceeded on premature retirement as laid down in Government of India, MoD letter No.16(5)2008/D(Pen/Policy), dated

29<sup>th</sup> September 2009. But the applicant had proceeded on premature retirement at her own request on 31<sup>st</sup> August 2001, i.e., much earlier to the implementation of VI Pay Commission. Hence, the applicant is not entitled for grant of disability pension. Therefore, the respondents request that this Original Application may be dismissed since devoid of any merit.

6. The applicant filed Rejoinder which would be as follows:

The applicant is entitled to disability pension by virtue of letter No.16(5)/2008/D(Pen/Policy), dated 29.09.2009, issued by the Department of Ex.Servicemen Welfare wherein the army officers have been granted disability pension on voluntary retirement or discharge on their own request on or after 01.01.2006. This issue has been discussed by the Principal Bench in the case between **Maj (Retd) Rajesh Kumar Bhardwaj and Union of India in O.A.No.336 of 2011**. The Hon'ble Principal Bench of AFT struck down Clause-3 of the above Notification and that was followed by this Hon'ble Tribunal in O.A.No.66 of 2012 in the case between **Maj AR Patil and Union of India by order dated 16.04.2013**. Other Benches of AFT including the Chandigarh Bench followed the same and the officers concerned are reaping the benefits. Further, the respondents conceded in the reply statement that the disability of the applicant was assessed at 40% for life by the Release Medical Board and that the applicant was

hale and hearty while joining the service. By virtue of the current position of law, this Hon'ble Tribunal may be pleased to award the disability pension from the date of retirement with broad banding effected on the same from the date of discharge/retirement.

7. On the above pleadings, the following points were framed for consideration:

*(1) Whether the impugned orders dated 07.01.2002, 28.04.2004 and 07.01.2014 are liable to be quashed ?*

*(2) Whether the applicant is entitled for a disability pension at 50% as broad banded and the Disability Benefit Cover under the Army Group Insurance Fund with interest from the date of her retirement ?*

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

8. Heard Mrs. Tonifia Miranda, learned counsel for the applicant and Mr. B.Shanthakumar, learned Senior Panel Counsel assisted by Col S.K. Varshney, Legal Officer (Army) appearing for the respondents.

9. The learned counsel for the applicant would submit in her argument that the applicant was commissioned in the Indian Army Military Nursing Services on 31.12.1979 at INHS ASHVINI, Mumbai as Lieutenant and after serving for a considerable period of 21 years and 8 months, she was discharged prematurely at her request owing to her

being placed under Low Medical Category. She would also submit that the applicant served with utmost sincerity in Bihar, Assam and Nagaland and also participated in OP ORCHID which was a field area. She was affected by stress and strain of the heavy work and while she was serving in Jabalpur and she was referred to Initial Categorisation Medical Board and the applicant was found suffering from Cervical Spondylosis. Hence, she was placed under Low Medical Classification P3 for 24 weeks and the said disability was surely aggravated by military service. She would further submit that the applicant was further referred to Medical Board and the opinion of the Medical Board dated 28.01.2000, placed her in low medical classification-A3 for another 20 weeks for the principal disability "Chondromalacia Patellae" and "Cervical Spondylosis" with PID C5-C6 and it was also opined that these disabilities were aggravated by physical stress and strain in the military duties. The applicant was driven to submit her requisition for premature retirement owing to the opinion of the Release Medical Board and accordingly, the applicant was permitted to retire prematurely on 31.08.2001. She would also submit that her claim for disability pension was rejected on 07.01.2002 by stating that the disabilities were not attributable to or aggravated by military service. The appeal preferred by her on 26.03.2002 was also not responded and hence she forwarded a letter dated 30.04.2003 to the respondents



to which the second respondent had issued an order dated 28.04.2004 rejecting the claim of the applicant on a new ground that the applicant had been discharged on premature retirement at her own request. The said reasoning for rejection of the applicant's claim for disability pension is *ex facie* not sustainable as the disabilities were opined by the Medical Boards as aggravated by military service and the Government has also issued a letter dated 29.09.2009 permitting the officers to seek for disability pension even though they prematurely retired at their own request on and from 01.01.2006. The said letter issued by the Government was not considered, but it was stated by the respondents that the applicant retired prematurely on 31.08.2001 and the benefits given under the said letter dated 29.09.2009 would apply to the retirees who retired after 01.01.2006. She would also quote the decision of the Hon'ble Apex Court made in **KJS Buttar vs. Union of India** reported in **2011 (11) SCC page 429** and submits that there could not be any distinction between the retirees from the army for grant of any benefit. She would also quote the judgment of Hon'ble Principal Bench of AFT, New Delhi made in O.A.No.336 of 2011 in support of her argument. Therefore, she requests to set aside the impugned orders and to grant disability pension.

10. The learned Senior Panel Counsel would submit in his argument that the applicant was rightly not given with any disability pension

since she opted for premature retirement and accordingly, she was permitted to retire on 31.08.2001. He would also submit that the provisions of Rule 50 of the Pension Regulations for the Army 1961 (Part-I) would disentitle the applicant from claiming disability pension and it straightaway prohibits any disability award, to the retirees who opt for voluntary retirement. He would further submit that the disability pension would also be paid to the individuals who were invalidated out of service on account of disability. He would also insist in his argument that the applicant was neither invalidated out from service nor retired after completion of her term of service with a disability and therefore, she is not entitled for the disability pension. He would further submit that the letter issued by the Government dated 29.09.2009 would apply to those retirees who retired from service on and from 01.01.2006 onwards and the applicant would not be covered by the contents of the letter and therefore, she cannot claim any benefit out of the said letter. He would therefore submit that the impugned orders were rightly passed by the respondents and there is no need for setting aside the same. Accordingly, both the impugned orders are sustainable and the claim of the applicant may be dismissed.

11. We have given our anxious thoughts to the arguments advanced on either side. We have also perused the records and documents produced by both.

12. **Point Nos. 1 and 2:** The enrolment of the applicant on 31.12.1979 in the Indian Army Military Nursing Services and her premature retirement on 31.08.2001 after serving for a period of 21 years and 8 months have not been disputed. She served at INHS ASHVINI, Mumbai MH, Namkum, Bihar, 162 MH, Dinjan, Assam and 154 GH, Zakhama Nagaland and INS Rajali, Arakonam during her tenure of service was also not disputed. No doubt the applicant was permitted to retire prematurely on her request owing to the disability sustained. The Release Medical Board convened on 12.07.2001 to assess the requirement of her release in low medical category had opined that the applicant was fit for release in low medical category SIHIA3P3E1. The disabilities as found in the medical examination report of Release Medical Board were "Chondromalacia Patellae", and "Cervical Spondylosis" and "Low Back ache" PID L4-L5. The Release Medical Board proceedings dated 17.07.2001 had opined that all the three disabilities were not attributable to military service but they were aggravated by military service as seen in Para-III of the Medical Board proceedings in "Opinion of the Medical Board." It was explained that the disabilities were aggravated due to stress and strain of military

service and the said aggravation was stated to have been still persisting. The Release Medical Board also opined that the disabilities assessed compositely for 40% and would continue throughout the lifetime of the applicant.

13. However, the said opinion was not considered by the second respondent and the disability claim was rejected on the ground that the disabilities were not attributable to or aggravated by military service. In the letter dated 07.01.2002, it was referred that the case of the applicant was examined in consultation with the competent authority and in accordance with the existing administrative provisions it has been decided that the applicant was not entitled to disability pension since those I.Ds. have been found to be neither attributable to nor aggravated by military service. The said reasoning given in the letter dated 07.01.2002 is patently a wrong opinion since the Release Medical Board has clearly opined that all the three I.Ds. were aggravated by military service. The letter dated 07.01.2002 did not explain as to the origin of the disability since happened in Jabalpur, Jodhpur or Arakonam which are peace stations. Even such reasons have been attributed by the respondents for rejection of disability pension, the aggravation of disability due to stress and strain in peace stations and field areas have no difference in view of the judgment of the Hon'ble Apex Court made in **Dharam Vir Singh's** case.

Unfortunately, no valid reason has been put forth by the respondents for the rejection of disability pension. The dictum laid down by the Hon'ble Apex Court in **A.V. Damodharan's** case should have been considered by the respondents for granting of disability pension in the lines of the opinion given by the Release Medical Board. The opinion of the Release Medical Board ought to have been given much credence and primacy and the rejection of disability pension contrary to the opinion of the Release Medical Board cannot be appreciated.

14. In the letter issued by the respondents on 28.04.2004, the respondents have rejected the grant of disability to the applicant on the ground that she had been released from service at her own request and therefore she is not entitled for any disability pension. According to the Senior Panel Counsel, Para-50 of the Pension Regulations for the Army 1961 Part-I is a stumbling block for the grant of disability pension in favour of the applicant since she opted for voluntarily retirement. The provisions of Para-50 of the Pension Regulations for the Army 1961 Part-I runs as follows:

*"An officer who retires voluntarily shall not be eligible for any award on account of any disability.*

*Provided that officer who is due for retirement on completion of tenure or on completion of service limits or on completion of the terms of engagement or on attaining the prescribed age of retirement and who seeks premature retirement for the purpose*

*of getting higher commutation value of pension shall remain eligible for disability element. "*

15. Per contra, the applicant claims that she be entitled to the disability pension despite she got premature retirement at her own request in accordance with the Government of India letter dated 29.09.2009.

16. Learned counsel for the applicant would submit that the judgment of the Hon'ble Apex Court as relied upon by the respondents in **2010 (11) SCC 213** between ***Union of India & Others and Ajay Wahi*** would not apply to the present case as the Government had changed its policy to grant disability pension to the retirees on premature retirement on and from 01.01.2006 by issuing a letter dated 29.9.2009. The said change of policy was not brought to the notice of the Hon'ble Apex Court despite the judgment was delivered on 6.7.2010 which was subsequent to the issuance of the said letter dated 29.9.2009. She would also argue that the Hon'ble Principal Bench of the Armed Forces Tribunal, New Delhi had considered the application of the said policy letter of the Government dated 29.9.2009 in favour of the pre-1.1.2006 retirees also after following the principle laid down in the judgment of the Hon'ble Apex Court in **KJS Buttar's** case. She would also argue that the challenge made by the respondents against the said judgment of the Hon'ble Principal Bench

of AFT was also dismissed by the Hon'ble Apex Court at the SLP stage owing to enormous delay, in Civil Appeal D.No.31811 of 2013, dated 24.3.2014.

17. The learned counsel for the applicant would also submit that there would be no difference between post-01.01.2006 retirees and pre-01.01.2006 retirees to get the benefit of award of disability pension as envisaged in the letter dated 29.9.2009 as per the said judgment of the Hon'ble Principal Bench of AFT, New Delhi. She would therefore stress in her argument that the refusal to grant disability pension to the applicant is not in accordance with law and therefore, it has to be set aside.

18. No doubt the Government has changed the policy in respect of the premature retirees towards the grant of disability pension. As per the Policy Letter dated 29.9.2009, the premature retirees who retired on and after 01.01.2006 were given the benefit of disability pension. The said benefit given by the Government in favour of the premature retirees who retired after 01.01.2006 is not disputed by the respondents. The only objection raised is that the applicant who retired prematurely on 31.08.2001 which is prior to 01.01.2006 will not be entitled to the award of disability pension for the ID found in the Release Medical Board proceedings. The judgment of the Hon'ble Apex Court reported in **2010 (11) SCC 213** between ***Union of India***

**& Others and Ajay Wahi** would lay down the dictum that an applicant who has not been invalidated out of service on account of any disability attributable to or aggravated by military service and if he/she sought for voluntary retirement on medical ground, he/she cannot be granted with disability pension as per the provisions of Regulation 50 of the Pension Regulations for the Army 1961, Part-I.

19. 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.

20. 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 29<sup>th</sup> 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. "*

21. 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. The applicant being an officer who went on premature retirement on 31.08.2001 would be a pre-01.01.2006 retiree and she should have been granted with the award of disability pension on the disability of 40% sustained by her as aggravated in military service. In the impugned letter dated 07.01.2014 it is simply stated that the applicant is not eligible for disability element of pension because she proceeded on voluntary retirement on her 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 letter dated 07.01.2014 is arbitrary and it is liable to be quashed. Therefore, we are of the considered view that the applicant is entitled for the disability pension as claimed by him and the denial of the same by the respondents is not sustainable.

22. In view of the discussions held above, the applicant is found entitled to disability pension even though she retired prematurely at her own request on 31.08.2001. Therefore, the impugned orders passed by the respondents dated 07.01.2002, 28.04.2004 and 07.01.2014 are liable to be quashed and the applicant is entitled for disability pension at 40%. No doubt the applicant prematurely retired from service owing to the opinion given by the Release Medical Board.

The Release Medical Board had certified that the applicant was fit to be released from service pursuant to her application for discharge at her own request. In our view, Para-4 of Entitlement of Casualty Awards 1982 would not include such discharge also to be considered as invalidation on the basis of the Release Medical Board proceedings. In the said circumstances, the applicant would not be entitled for broad banding of 40% disability into 50% as per the provisions of letter at para 7.2 of Government Order MoD dated 31.01.2001. Accordingly, both the points are decided as indicated above.

23. **Point No.3**: In view of our discussions held above, we find that the impugned orders challenged by the applicant are liable to be set aside and the applicant is found entitled for disability pension at 40% only. As per the contents of the letter dated 29.09.2009, the benefits were conferred on the recommendation of VI Central Pay Commission and therefore, the applicant is entitled to the benefit of disability pension with effect from 01.01.2006 and not from the date of her retirement, i.e., 31.08.2001. Nothing was claimed or argued in respect of the Disability Benefit Cover under the Army Group Insurance Fund towards the disability of the applicant. Therefore, no relief can be granted in that aspect.

24. Accordingly, the application is allowed in respect of the claim of the disability pension with effect from 01.01.2006 at 40% with interest



at 7% per annum from 01.01.2006 till the date of payment. The respondents are directed to pay the arrears and to issue PPO to that effect within a period of three months and in failure to do so, the applicant shall be entitled to 12% on the arrears from the date of default till the date of realization.

24. In the result, the application is allowed as indicated above. No order as to costs.

LT GEN K. SURENDRA NATH  
MEMBER (ADMINISTRATIVE)

JUSTICE V.PERIYA KARUPPIAH  
MEMBER (JUDICIAL)

**16.10.2014**

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

Internet : Yes/No  
Internet : Yes/No

vs

To:

1. The Secretary  
Ministry of Defence  
New Delhi-11.
2. The Chief of Army Staff  
Army HQ  
DHQPO, 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. Commanding Officer  
INS Rajali  
Arakonam.
5. The Principal Controller of Defence Accounts  
Office of PCDA (Pensions)  
Allahabad, Uttar Pradesh  
Pin-211014.
6. Mrs. Tonifia Miranda  
Counsel for applicant.
7. Mr. B. Shanthakumar, SPC  
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.33 of 2014

Dt: 16-10-2014