

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**

O A No.93 of 2012

THURSDAY, THE 6TH DAY OF JUNE, 2013/16TH JYAISHTA, 1935

CORAM:

**HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)**  
**HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)**

**APPLICANT:**

M.U. KRISHNAN, (EX.WARRANT OFFICER OF ARMY POSTAL SERVICE)  
No. 8365929, AGED 65 YEARS, S/O.LATE UNDIRA, 29/431 A, ADARSH,  
JANATHA ROAD, VYTTILA P.O., KOCHI – 682 019.

BY ADV. SRI. V.K. SATHYANATHAN.

***versus***

**RESPONDENTS:**

1. UNION OF INDIA, REPRESENTED BY ITS  
SECRETARY, MINISTRY OF DEFENCE,  
SOUTH BLOCK, NEW DELHI – 110011.
2. THE CHIEF OF ARMY STAFF,  
INTEGRATED HEADQUARTERS OF MINISTRY OF DEFENCE (ARMY),  
NEW DELHI - 110 011.
3. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS),  
OFFICE OF THE PCDA (P), DRAUPADI GHAT, ALLAHABAD,  
U.P. - 211 014.
4. THE OIC RECORDS, ARMY POSTAL SERVICE RECORDS,  
PIN – 900746, C/O.56 APO.

BY ADV. SRI.P.J. PHILIP, CENTRAL GOVERNMENT COUNSEL.

**ORDER**

**Shrikant Tripathi, Member (J):**

1. The applicant, M.U.Krishnan, Ex Warrant Officer, Army Postal Service, No.8365929, has filed the instant Original Application for a

direction to the respondents to sanction and pay him the minimum pension with effect from 1.1.1996. Alternatively, he has prayed for granting him the benefit of rounding off of the disability pension to the extent of 50% with effect from 1.1.1996. He has further prayed for a direction to the respondents to issue him the pension book. Interest on the arrears has also been claimed.

2. The relevant facts are that, the applicant was a permanent civil employee of the Posts and Telegraphs Department. He was enrolled in the Army Postal Service Corps on 18<sup>th</sup> July 1971 on deputation in the rank of Warrant Officer II. On completion of the initial term of engagement of 18 months, he was discharged from the Army with effect from 15<sup>th</sup> May, 1973. Before the discharge, he was examined by a Release Medical Board held at Base Hospital, Delhi Cantonment, on 27<sup>th</sup> March 1973. The Release Medical Board placed the applicant in the low medical category, "CEE (Permanent)" with effect from 15<sup>th</sup> May 1973 and accordingly his discharge from the Army was made under Army Rule 13(3) Item II (i) (a) and was accordingly reverted back to his parent department vide movement order No.10 dated 25<sup>th</sup> April 1973 with the direction to report to the Senior Superintendent of RMS, Ernakulam Division, Cochin. The Release Medical Board found that the applicant had the disability, "Tubercular Meningitis" and assessed the same at 50% for one year. On the basis of the recommendations of the Release

Medical Board, the applicant was sanctioned Rs.24/- p.m. as disability pension with effect from 16.5.1973 to 26.3.1974. The Medical Board reviewed the applicant's disability from time to time and ultimately the Re-Survey Medical Board held in the year 2004 assessed the applicant's disability with effect from 1<sup>st</sup> April, 2004 at the rate of 30% for life.

3. It may be mentioned that according to the Government of India, Ministry of Defence letter No.1(4)/87/D (Pension/Service) dated 27<sup>th</sup> July, 1987, the rate of disability pension for NCOs/OR was Rs.450/- for 100% disability. As the applicant's disability was 30%, therefore, the aforesaid amount of Rs.450/- was proportionately reduced to Rs.135/- p.m. So he filed O.A.No.1615 of 1993 in the Central Administrative Tribunal, Ernakulam for the grant of disability pension at least at the minimum rate of Rs.375/- p.m. The Central Administrative Tribunal allowed the O.A. and directed the respondents to sanction and pay the minimum pension @ Rs.375/- p.m. with effect from 1.1.1986. Accordingly, the respondents sanctioned him the said amount which he used to draw till 31.12.1995, but keeping in view the recommendations of the 5<sup>th</sup> Central Pay Commission, the respondents reduced the aforesaid amount of the pension to Rs.90/- per month. So, the applicant filed O.P.No.19162/99 in the Honourable High Court of Kerala at Ernakulam, claiming minimum pension of Rs.1275/- with effect from 1.1.1996, as per the Government letter dated 24.11.1997. The High

Court did not agree to the claim for Rs.1275/- p.m., but allowed the applicant to draw Rs.375/- p.m. already granted by the Central Administrative Tribunal and accordingly quashed the PPO granting him only Rs.90/- p.m. The applicant thereupon filed W.A.No.954 of 2000 in the Hon'ble High Court of Kerala which was dismissed as withdrawn on 10.6.2002, with the liberty granted to the applicant to move the authorities for granting under clause (c) of PPO No.D/RA/571/99. The 6<sup>th</sup> Central Pay Commission further revised the minimum pension with effect from 1.1.2006 at the rate of Rs.3500/- in the place of Rs.1275/- p.m. as recommended by the 5<sup>th</sup> Central Pay Commission. The applicant now claims the minimum pension of Rs.3500/- with effect from 1.1.2006 as per the recommendations of the 6<sup>th</sup> Central Pay Commission. Alternatively, he claims rounding off of the disability pension.

4. No doubt, the Central Administrative Tribunal allowed the applicant to draw minimum pension at the rate of Rs.375/- p.m. with effect from 1.1.1986, but the same came to an end on the implementation of the 5<sup>th</sup> Central Pay Commission recommendations with effect from 1.1.1996. The applicant's request to provide him minimum pension @ Rs.1275/- p.m with effect from 1.1.1996 as per the recommendation of the 5<sup>th</sup> Central Pay Commission was turned down by the High Court while rendering the judgment in O.P.No.19162 of 1999 and allowed him to continue to draw the minimum pension of

Rs.375/- p.m., even during the period the recommendations of the 5<sup>th</sup> Central Pay Commission had been made operative. In this view of the matter, the contention that the applicant was entitled to Rs.1275/- p.m. as minimum pension immediately before the recommendation of the 6<sup>th</sup> Central Pay Commission does not appear to be correct. He was virtually being paid Rs.375/- per month immediately before the implementation of the recommendations of the 6<sup>th</sup> Central Pay Commission.

5. It is also very relevant to state that the applicant has retired also from the Posts and Telegraphs Service, and whatever services he had rendered in the Army Postal Service, have also been included in the services rendered by him in the Posts and Telegraphs Department and on the basis of the length of service (both postal and army), he has already been sanctioned service pension, which is being paid to him regularly and there is no dispute to that extent.

6. By the instant O.A., the applicant claims disability element of pension, in addition to the service pension, with regard to the aforesaid disability which has been assessed at 30% for life by the last Re-Survey Medical Board. The Government has already fixed the amount of the disability pension with effect from 01.1.2006 payable to a person who sustains 100% disability. In the matter of a person whose disability is less than 100%, the disability pension is proportionately reduced. It appears that the respondents had fixed the applicant's

disability element of pension on the basis of this formula, but the Central Administrative Tribunal did not approve the same and allowed the applicant to draw the minimum pension of Rs.375/- p.m. with effect from 1.1.1986, but the minimum pension so determined by the Central Administrative Tribunal was not allowed to be revised to Rs.1275/- p.m. with effect from 1.1.1996 by the High Court while passing the order in O.P.No.19162 of 1999. So, adopting the same principle, the claim for minimum pension of Rs.3500/- with effect from 1.1.2006 cannot be entertained. More so, the minimum pension of Rs.3500/- is in the form of service pension and as such, the applicant cannot be permitted to contend that he is entitled to disability element of pension to the extent of minimum service pension. At most, the applicant can be said to be entitled to the disability element of pension with effect from 1.1.2006 to the extent of the percentage of his disability as per the norms fixed for granting disability element of pension for 100% disability with effect from 1.1.2006. Since the applicant had been sanctioned minimum pension of Rs.375/- p.m. with effect from 1.1.1986 and the same amount continued even on or after 1.1.1996, in that eventuality, he can also be said to be entitled to the revised amount of Rs.375/- p.m. with effect from 1.1.2006 as per the policy laid down by the Government of India for revising the pension with effect from 1.1.2006. The respondents are, therefore, directed to find out as to what amount

would be payable, if the amount of Rs.375/- is revised with effect from 1.1.2006 as per the formula fixed for revision of pension. If the amount so fixed is more than the amount payable on 30% of the applicant's disability with effect from 1.1.2006, in that eventuality, in place of disability pension, the applicant shall be paid with effect from 1.1.2006 the revised amount of the minimum pension of Rs.375. If the disability element of pension for the applicant's percentage of disability is higher than the pension revised in the aforesaid manner, the higher amount shall be paid to him. A de novo exercise is to be done by the respondents in this regard, so as to determine the amount liable to be paid to the applicant with effect from 1.1.2006. We direct the respondents accordingly.

7. So far as the claim for the rounding off of the claim for disability pension is concerned, we have already considered the issue thoroughly while rendering the order in O A. No.120 of 2011 and connected cases (***Raman Raveendran vs. Union of India and Ors***) decided on 21<sup>st</sup> March, 2013, and evolved the principle that the benefit of rounding off of the benefit of disability pension is liable to be given to those whose tenure is cut due to invalidment. If a person has completed his tenure, he is not entitled to the benefit of rounding off of disability pension. The relevant observations made in the aforesaid order are being reproduced as follows:

*“36. In view of the aforesaid, we are of the view that the benefit of broad banding (rounding off) of the pension as provided in para 7.2 or 10.2 of the Government Letter dated 31.1.2001 has been confined to only those whose tenure is cut due to invalidment from the service on account of the disability. Such benefit is not available to the persons who are retained in service despite the disability/war injury and are allowed to complete their tenure. In this connection, a reference may be made to paragraphs 8.1 and 8.2 in the matter of disability pension and para 11.4 and 11.5 in the matter of war injury pension.*

*37. So far as the submission with regard to discriminatory classification between the persons whose tenure is cut due to invalidment on the one hand, and the persons whose tenure is not cut, on the other, is concerned, it has no substance. There appears to be a rationale behind the classification. Since the person who is invalided out of service prematurely due to the disability/war injury is deprived of the remaining tenure of service due to invalidment, consequently, the benefit of pay and allowances, seniority, promotion, service element of pension on the basis of length of service etc, is also adversely affected due to the invalidment in his matter. Whereas, the other category, who is not discharged prematurely despite the disability/war injury and is retired/discharged on completion of his tenure or on attaining the age of superannuation gets all such benefits without any curtailment. In this way, both the said categories cannot be said to be similarly placed and are, therefore, two distinct and separate classes.*

xxx xxx xxx xxx

xxx xxx xxx xxx

*43. In view of the aforesaid, the benefit extended by para*



7.2 or 10.2 of the Government Letter dated 31.1.2001 with effect from 1.1.1996 could not be denied to 'pre-1.1.1996 retirees'. The respondents have adopted two different yardsticks between pre and post 1.1.1996 retirees without any reasonable basis. The persons who retired on 1.1.1996 itself have been given the benefit of rounding off of the disability pension and other benefits by the Government letter dated 31.1.2001 with effect from 1.1.1996. But the pre 1.1.1996 retirees have been granted the benefit by the Government letter dated 19.1.2010 with effect from 1.7.2009 only. We do not find any justification in fixing two different dates for the commencement of the benefit for post and pre 1.1.1996 retirees, especially when both these categories are similarly placed, excepting the date of their retirements, which could not be made as the basis to make the classification. In our view, the Government Letter dated 19.01.2010 could not take away the decision of the Apex Court in **K.J.S.Buttar's case**, which was based on the interpretation of Articles 14 and 16 of the Constitution of India and by which the Apex Court held that the classification was unconstitutional. Any unconstitutional act or order cannot be revived or made effective in any way by any Government order. To put it otherwise, whatever is unconstitutional, it cannot be given effect to by any State action. Therefore, the Government letter dated 19.1.2010 and other consequential letters and actions have to face the same consequence. We are, therefore, of the view that pre 1.1.1996 invalided Officers/ PBORs are also entitled to the benefits extended by para 7.2 or 10.2 of the Government Letter dated 31.1.2001 with effect from 1.1.1996. ”.

8. The applicant had joined the Army for a limited period. He completed his tenure in the Army and was reverted to his parent

department on completion of the tenure. After being reverted from the Army, he served his remaining tenure in the Posts and Telegraphs Department. It is no body's case that the applicant's tenure in the Army was cut short due to the disability.

9. In view of the aforesaid, the applicant's disability did not result in reducing his Army tenure, due to the reason that his reversion from the Army to the Posts and Telegraphs Department was made on completion of his tenure in the Army. As such, the claim for rounding off of the disability pension from 30% to 50% has no substance.

10. With regard to the applicant's prayer for issue of discharge book is concerned, it may be mentioned that he was a permanent employee of the Posts and Telegraphs Department and had joined the Army Postal Service for a limited period of 18 months, on deputation, and was ultimately repatriated to his parent department. Counsel for the respondents submitted that the applicant's Army service could not be said to be an independent service or a new service, conferring him a right to claim discharge book. He next submitted that the applicant was being paid service pension for the total period of both the Army Postal Service and the Post and Telegraph service. In this connection, the counsel for the applicant informed that the discharge book has been prepared by the concerned office of the respondents and was ready. If

it is so, the respondents may give the discharge book on their own to the applicant. We, therefore, do not consider it proper to issue any direction in this regard.

11. For the reasons stated above, the Original Application is partly allowed. The respondents are directed to carry out the necessary exercise as per the observations made in para 6 of this order and take suitable decision in accordance with law within four months from today and communicate the same to the applicant.

12. There will be no order as to costs.

13. Issue free copy of this order to both side.

Sd/-  
LT. GEN. THOMAS MATHEW,  
MEMBER (A)

Sd/-  
JUSTICE SHRIKANT TRIPATHI,  
MEMBER (J)

DK.

(True copy)

Prl. Private Secretary