

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

22.

OA 1169/2018

Maj KK Tiwari (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Shakti Chand Jaidwal, Advocate
For Respondents : Mr. Niranjana Das, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
16.01.2024

On behalf of the applicant, reliance is placed on order dated 12.03.2020 in OA 1946/2018 of the AFT(PB) wherein, it was directed to the effect:

“ Counsel for the respondents has handed over to us the letter dated 24th June, 2019 vide which the competent authority has accorded approval for grant of Disability Element @30% for life w.e.f. Ist January, 2006 to 31st December, 2015 and thereafter, broad banding to 50% for life w.e.f. Ist January, 2016.

Counsel for the applicant submits that the applicant is entitled to the benefit of broad banding w.e.f. Ist January, 2006 and in any case at least 3 years prior to the filing of OA.

In view of this letter, the applicant has been granted the benefit of disability element @30%. However, benefit of broad banding w.e.f. Ist January, 2006 cannot be granted same being barred by limitation.

The benefit of broad banding to 50% be granted three years prior to the filing of OA which was filed on 26th November, 2018

With these observations the OA stands disposed of. Requisite PPO be issued at the earliest.”

On behalf of the applicant, reliance has been placed on order dated 31.07.2019 of the Hon'ble Supreme Court in CA 21811/2018- titled *Union of India & Ors* (through its Secretary) Vs *Ex Sgt Girish Kumar & Ors* wherein, it was observed to the effect:

“Leave to appeal granted.

Delay condoned.

Issue notice.

In the meanwhile, there shall be a stay of operation of the impugned judgment and order passed by the Armed Forces Tribunal.

However, learned Additional Solicitor General says that he will advise the Union of India to release the disability pension for a period of three years prior to the date of filing the original application before the Tribunal or the date of retirement as may be applicable.”

It is essential to observe that vide Para 55 of the order dated 01.12.2017 in OA 1439/2016 in the case of Ex Sgt Girish Kumar Vs Union of India & Ors., it was concluded to the effect:

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/war injury element of 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 (i) 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;

Vide order dated 01.12.2017 though it has been observed that the grant of the pension vide the impugned order of the AFT in case of *Ex Sgt Girish Kumar* was stayed and a submission was

made by the Additional Solicitor General to the effect that he would advise the Union of India to release the disability element of pension for the period of three years prior to the date of filing of the original OA before the Tribunal or the date of retirement as may be applicable.

On behalf of the respondents reliance has been placed on Policy letter dated 05.09.2017 issued vide No.17(01)2017(02)/D(Pension/Policy) by the GoI, Ministry of Defence with specific reliance on Para 16 thereof which reads to the effect:

“16. No arrears on account of revision of Pension/Family Pension on notional fixation of pay shall be admissible for the period prior to 1.1.2016. The arrears on account of revision of pension/family pension in terms of these orders would be admissible with effect from 1.1.2016. For calculation of arrears becoming due on the revision of pension/family pension on the basis of this letter, the arrears of pension and the revised pension/family pension already paid on revision of pension/family pension in accordance with the instructions contained in this Ministry's letter No.17(01)/2016-D(Pen/Pol) dated 29.10.2016 shall be adjusted. Any overpayment of pension coming to the notice or under process of recovery shall be adjusted in full by the Pension Disbursing Agencies against arrears becoming due on revision of pension on the basis of these orders. In case of a pensioner to whom the benefit accrues under the provisions of this letter has died/dies before receiving the payment of arrears, the Life Time

Arrears of pension (LTA) shall also be paid as per extant orders.”

It is thus submitted on behalf of the respondents that in terms thereof, no arrears on account of revised pension/family pension on notional fixation shall be admissible for the period prior to 1.1.2016 and the respondents thus seek to submit that no arrears on account of revised pension/family pension on notional fixation of pay shall be admissible. In the said paragraph as has been put forth, it is only submitted that no arrears on account of revision of pension on notional fixation of pay shall be admissible prior to 1.1.2016 and submit that the disability element of pension be read in conjunction with revised pension/family pension on notional fixation. The aspect of the grant of the arrears of the broadbanding of the disability element of pension as detailed in Para 16 of the Govt of India, Ministry of Defence letter No.1(2)/97/D(Pen-C) dated 31.1.2001 with it having been given concurrence by the Finance Division of the said Ministry vide No..1(2)/97/D(pen-C) dated 31.1.2001 coupled with paragraph 2.1. of this letter which reads to the effect:

Part-I Date of effect and Definitions

“2.1. The provisions of this letter shall apply to the Armed Forces personnel who were in service

on 1.1.1998 or joined/join service thereafter unless otherwise specified in this letter.”

Making it apparent that the said provisions of this letter shall apply to the armed force personnel who were in service w.e.f. 1.1.1996 or joined/join service thereafter unless otherwise specified in this letter. Paragraph 7.2 thereof stipulates to the effect:

“7.2. Where an Armed Forces personnel is invalided out under circumstances mentioned in Para 4.1 above, the extent of disability or functional incapacity shall be determined in the following manner for the purposes of computing the disability element:

<i>Percentage of disability As assessed by invaliding <u>Medical board</u></i>	<i>Percentage to be reckoned for computing of disability <u>element</u></i>
less than 50	50
between 50 and 75	75
between 76 and 100	100

coupled with paragraph 9.2 of this Policy letter dated 31.1.2001:

“9.2 The provision contained in Para 9.1 above shall be applicable to casualties on or after 01 Jan 96.

Note below para 9.9.11. Vide MoD No.16(5)/20080D(Pen/Pol) dated 29.09.2009 Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by military

service and foregone lump sum compensation in lieu of that disability, may be given disability element at the time of their retirement/discharge whether voluntary or otherwise in addition to service pension/gratuity.”

It is implicit therefrom that the applicant who seeks for the grant of the arrears of the broadbanded of his disability element of pension from the period three years prior to the institution of the present OA w.e.f. 03.07.2015 is entitled to the grant of the broadbanded of the disability in relation to the disability in relation to the disability of INTERNAL DERANGEMENT OF KNEE JOINT(RT) with percentage of disablement @20% for life to be broadbanded @50% for life w.e.f. 03.07.2015.

It is essential to observe that vide order No.16(5)/2008/D(Pen/Pol) dated 29.09.2009 issued by the Govt of India, Ministry of Defence which relates to the effect:

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

Xxxxxx

Xxxx

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.”

Vide Para 3 thereof, the provisions of the said letter have already been made applicable to the personnel who were retired from service on or after 1.1.2006.

The respondents are directed to issue the necessary corrigendum PPO as directed hereinabove within a period of three months from the date of this order and to pay the arrears also thereto to the applicant within the said period of three months failing which the applicant would be entitled to interest @6%p.a. on the arrears due.

The oral prayer on behalf of the respondents seeking leave to appeal against the observations hereinabove is declined in view of the verdict of the Hon’ble Supreme Court in *Ex Lac Yogesh Pathania vs Union of India & Ors* in IA No.1/2016 in Civil Appeal No.D No.14214 of 2016 and in *Union of India & Ors Vs Parashottam Dass* in Civil Appeal No.447/2023 dated 21.03.2023 as no question of law is involved in the matter much less any point of law of

general public importance involved in the order to grant leave to appeal.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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