

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
AT NEW DELHI**

RA No. : 01/2009
(IN TA No.78/09)
[WP (C) No.6195/07 of Delhi High Court]

And

TA No.175/09
[WP(C) No.2739/08 of Delhi High Court]

And

TA No.177/09
[WP(C) No.7128/08 of Delhi High Court]

Ex Hon. Lt. Bhanwar Singh etc.

.....Petitioners

Versus

Union of India & Ors.

.....Respondents

For petitioner

In RA no.1/09 : Col.S.R. Kalkal(Retd.), Advocate
In TA 175/09 & 177/09 : Sh.A.K. Trivedi, Advocate

For respondents

: Mr.Mohan Kumar, Advocate

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON
HON'BLE LT. GEN. M.L. NAIDU, MEMBER**

**ORDER
19.11.2009**

1. The above three petitions i.e. RA No. 1/2009 in TA No. 78/2009, TA No. 175/2009 and T.A. No. 177/2009 involve identical question of law, hence these petitions are disposed of by this common order.

2. For convenient disposal of matters the facts of RA No. 01/2009 (in TA No.78/09) are taken into consideration. This review application filed against the order dated 18.09.2009 passed by this Court whereby this petition was disposed of relying on decision of Hon'ble Apex Court given in case of P.K. Kapur v. Union of India and Others, 2007(3) Judgments Today SC 98. Aggrieved by this present review application has been filed requesting that present case is not covered under the aforesaid judgment of Hon'ble Apex Court.

3. In order to dispose of review application the brief facts of the petition may be detailed. Petitioner was enrolled in Indian Navy as Sailor on 17.06.1960 after having been found physically and medically fit. Petitioner met with an accident while on duty and had fracture head of humerus and dislocation. Petitioner was admitted in Indian Naval Ship Hospital Ashwani, Bombay for treatment but could not be cured completely and therefore, was discharged in a low medical category on 31.01.1997. The injury of petitioner was declared to be attributable to naval service. The release medical board recommended that petitioner be released in low medical category with 30% disability pension. It is alleged that

disability pension is granted and regulated as per Regulation 173 pension Regulations for the Army which are para-materia to pension Regulation 205 of Navy Statutory. It is also submitted that incumbent is retired on completion of service in a permanent low medical category, he shall be deemed to have been invalided out as per Regulation 179 of Pension Regulation. Therefore, petitioner submitted that he is entitled to service element of pension alongwith disability pension and governed by the notification of Defence Ministry dated 31.01.2001 (Annexure-P3).

4. Learned counsel for petitioner has strenuously argued before us that aforesaid judgment of P.K. Kapur (Supra) is not applicable to the facts of the present case and submitted that present case is governed by this circular and invited our attention to Clause 7 of circular under heading 'Disability Pension on Invalidment' and specially to Clause 7.2. As against this, learned counsel for respondents has invited our attention to Clause 8 under heading 'Disability Element on retirement/discharge'.

5. In order to appreciate the contention of rival parties, it will be relevant to reproduce here Clauses 7.1, 7.2, 8 and 8.2 of said circular dated 31.01.2001.

"7.1 Where an Armed Forces Personnel is invalided out of service under circumstances mentioned under category 'B' & 'C' in para 4.1 above which is accepted as attributable to or aggravated by Military Service, he/she shall be entitled to disability pension consisting of service element and disability element as follows:-

(1) Service Element

(i) Commissioned Officers: The amount of service element shall be equal to the retiring pension determined as per para 6.1(c) of this Ministry's letter no.1(6)98/D(Pen/Ser) dated 03 Feb 98. For this purpose the reckonable qualifying service shall mean the actual service rendered by the officer plus the full weightage appropriate to the rank held at the time of invalidment (except in the case of TA officers) as given in para 5(b) of the Ministry's above said letter dated 03 Feb 98. There shall be no condition of minimum qualifying service having been actually rendered for earning this element if otherwise due.

(ii) PBOR: Service element will be determined as follows:-

Length of actual
Element
qualifying service
rendered(without
weightage)

Entitlement of Service

15 years or more(20
years or more in the
case of NCs(E)

Equal to normal service pension
relevant to the length of qualifying
service actually rendered plus
weightage of service as given
in para 5 & 6 of Ministry's
letter dated 03 Feb 98 *ibid*

Less than 15 years(20
years in case of
NCs(E)

Equal to service pension as
determined as per para 6.2(b) of
Ministry's letter dated 03 Feb 98
but it shall in no case be less

than $\frac{2}{3}^{\text{rd}}$ of the minimum service pension admissible to the rank/pay group

Note: The existing provision in the case of PBOR regarding grant of service element equal to minimum service pension appropriate to the rank and pay group in case where service is less than 15 years (20 years in case of NCs(E)) and the disability is sustained in flying/parachute jumping duty or while being carried on duty in an aircraft under proper authority shall continue.

(II) (a) Disability Element: The rates of Disability element for 100% disability for various ranks shall be as follows:-

Rank	Amount p.m.
i) Commissioned Officers and honorary Commissioned Officers of the three Services, MNS, TA and DSC	Rs.2600/-
ii) Junior Commissioned officers and Equivalent rank of the three services, TA and DSC	Rs.1900/-
ii) Other ranks of the three services, TA and DSC	Rs.1550/-

(b) Disability lower than 100% shall be reduced with reference to percentages as laid down in para 7.2 below. Provided that where permanent disability is not less than 60%, the disability pension (i.e. total of service element plus disability element) shall not be less than 60% of the reckonable emoluments last drawn.

7.2 Where an Armed Forces personnel is invalided out under circumstances mentioned in Para 4.4. above the extent of disability or functional incapacity shall be determined in the following manner for the purposes of computing the disability element:-

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

8.1 Where an Armed Forces Personnel is retained in service despite disability arising/sustained under the circumstances mentioned under category 'B' & 'C' in para 4.1 above and is subsequently retired/discharged on attaining age of retirement or on completion of tenure, he/she shall be entitled to disability element at the rates prescribed at para 7.1.II(a) above for 100% disablement.

8.2 For disabilities less than 100% but not less than 20%, the above rates shall be proportionately reduced. No disability element shall be payable for disabilities less than 20%. Provisions contained in para 7.2 above shall not be applicable for computing disability element. Disability actually assessed by the duly approved Release Medical Board/invaliding Medical Board as accepted by the Pension Sanctioning Authority, shall reckon for computing disability element."

6. Learned counsel for respondents submitted that case of petitioner is fully covered by P.K. Kapur (Supra) case and petitioner has not been invalided out on medical ground. Petitioner has retired on attaining the period of engagement with 30% disability. Therefore, he is only entitled to benefits of 30% disability alongwith pension and not as per Clause 7.2 and Clause 7.1.II(a). Learned counsel for petitioner has also submitted in view of Clause 179 which is para-materia to pension Regulation 205 of Navy Statutory that in case incumbent retires alongwith disability attributable to or aggravated by military service and recorded by Service Medical Authority then he shall be deemed to have been invalided out of service and shall be granted disability pension

from the date of retirement. The Regulation 179 of Pension

2X 22

Regulation is reproduced as under:-

"179. An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is less than 20 per cent or more and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element as the case may be,

(2) The disability element referred to in Clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease.

Note: in case of an individual discharged on fulfilling the terms of his retirement, his unwillingness to continue in service beyond the period of his engagement should not affect his title to the disability element under the provision of the above Regulation."

7. After hearing learned counsels for the parties we are of the opinion that so far as the petitioner is concerned, he will be entitled to the extent of medical disability as pointed out by the Medical Board and he is not entitled to get disability pension as

per Clause 7.1.II(a) as contended by the petitioner. The expression appearing in Regulation 179 (b) that boarded out disability will have to be read in context of the case whether the incumbent is boarded out primarily on account of injury incurred by him or on account of he is going out after engagement or superannuation. The expression boarded out on medical ground will only apply in cases where the incumbent is being retired on account of shortening of his regular tenure of service. But in the present case the incumbent has been retired after period of engagement or superannuation with 30% medical disability. Therefore, he will be entitled to the extent of 30% medical disability along with his full pension on account of full service i.e. engagement/superannuation. Therefore distinction has to be made between the two i.e. one who is being retired on engagement/superannuation with medical disability less than 20% or above and the person who is being retired on account of medical disability. Therefore, the case of the petitioner is fully covered by Clause 8 and Regulation 7 has to be read in context with in what manner he is sought to be retired. In case he is retired on medical ground, Regulation 7 will be applicable and if he is retired on attaining the

age of superannuation/engagement with the medical disability of 30% or above 20% then the case will have to be examined in that light. In case he is retired purely on medical ground and service tenure is cut then of course proportionately his pension shall be worked out as given in Regulation 7.1.II(a). In case he is retiring on account of attaining the age of superannuation or engagement along with the disability, this case will fall in the Clause of 8 (i) and (ii) where he will be entitled to disability actually assessed by the duly approved Release Medical Board/Invalided Board as accepted by the Pension Sanctioning Authority and the amount of disability shall be reckoned for computing the disability element. Therefore, learned counsel attempted to show the Regulation 179 which is statutory in character, shall be given its full meaning whenever a person is being retired even after attaining the superannuation with medical category then in his case he will be governed by Clause 7 is not correct. The correct position is that this will be governed by Clause 8 which is a category in itself and classification which has been made by the Authorities is correct i.e. when incumbent is retired purely on medical ground and a person who retires after engagement or superannuation with medical

disability, therefore, two classes of cases has to be kept in mind and they cannot be equated to each other. In this context a reference has been made in P.K. Kapoor case (supra) where their Lordships has categorically stated as under:

"However, OM dated 3-2-2000 states that the said enhancement shall be applicable only to those officers who stood invalided out of service. This provision is not applicable to the appellant who retired on superannuation prior to 1-1-1996. The appellant was not invalided out of service. He completed his normal tenure of service. The benefit of enhancement is given to those officers who stood invalided out of service because their tenure of service got cut due to invalidment on account of disability or war injury. Therefore, the appellant does not fall in the category of invalidment. The Government is always entitled to classify officers who stood retired vis-a-vis the officers whose tenure of service got reduced due to invalidment. These are two distinct and separate categories. Hence, there is no violation of Article 14 of the Constitution."

8. Therefore, the distinction made by the Authorities has already been upheld by the Hon'ble Apex Court in P.K. Kapoor's decision.

9. Learned counsel for the petitioner submitted that petitioner is now entitled to 30% disability as an officer. Respondents may be directed to release 30% disability as an officer. Our attention invited to Regulation 105-B of the Navy

(Pension) Regulations, 1964 which says that the disability should be taken at the time of discharge. Regulation 105-B reads as under:-

"105-B. Disability at the time of discharge.—(1) A sailor, who is discharged from service after he has completed the period of his engagement and is, at the time of discharge found to be suffering from a disability attributable to or aggravated by naval service may at the discretion of the competent authority be granted in addition to the service pension admissible, a disability element as if he has been discharge on account of that disability.

(2) The disability element of pension will be assessed on the accepted degree of disablement at the time of retirement or discharge on the basis of the rank held on the date on which the wound or injury was sustained or in case of a disease on the date of the first removal from duty on account of that disease.

(3) The provisions in sub-regulations (1) and (2) shall also apply to sailors discharged from service on completion of the period of their engagement and who have earned only a service gratuity."

10. According to learned counsel for the respondents, petitioner is entitled to disability on the basis of rank held on the date of which wound or injury was sustained. He also invited our attention to Extract of Navy Order (SPL) 1/89 which reads as under :-

"Rank for assessment of Disability pension. The rank taken into account for assessment of the disability pension is as follows:-

(a) If invalidated. The rank for assessment of both the disability and Service elements of disability pension will be the substantive/acting temporary rank held by a sailor on the date of invalidment.

(b)"

11. The contention of the respondents is that petitioner will be entitled to the extent of disability in terms of percentage of the rank held by him at the time of receiving injury. Therefore, he is not entitled to 30% of the last rank held by him.

12. Learned counsel for the petitioner has invited our attention to a Notification dated 7th June, 1999 with regard to implementation of Government decision on the recommendation of 5th Pay Commission regarding pensionary benefits in respect of commissioned officers and personnel below the rank of Officer.

"No.1(1)/99/D(Pen/Services)
Government of India
Ministry of Defence
New Delhi
The 7th June, 1999.

To

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

Sub: Implementation of Government's decision on the recommendations of the Vth CPC relating to pensionary benefits in respect of Commissioned Officers and Personnel Below Officer Rank.

27
28

.....

2.1 COMMISSIONED OFFICERS

Post & Pre-1.1.96 cases

- (a) Pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be subject to a minimum of Rs.1275/- p.m. and a maximum of upto 50% of the highest pay applicable to Armed Forces personnel but the full pension in no case shall be less than 50% of the minimum of the revised scale of pay introduced w.e.f. 1.1.96 for the rank last held by the Commissioned Officer at the time of his/her retirement. However, such pension shall be reduced pro-rata, where the pensioner has less than the maximum required service for full pension.
- (b) Ordinary family pension so calculated/consolidated under para 8 of this Ministry's letter dated 27.5.98 shall not be less than 30% of the minimum of the revised scale of pay introduced w.e.f. 1.1.96 for the rank held by the pensioner/deceased commissioned officer.
- (c) In post 1.1.96 cases, PSAs will revise pension/family pension suo-moto where beneficial to the pensioner. However, in pre-1.1.96 cases, action to revise pension/family pension in terms of these orders shall be initiated by the concerned PSA where applications have already been received in pursuance of earlier orders issued under this Ministry's letter dated 27.05.1998 regardless of whether their cases have already been finalised or are in the process of finalisation. Those pensioners/family pensioners who have not so far submitted the necessary application, are required to submit application (in duplicate) upto 31.12.99 as per proforma annexed hereto, through usual channel.

2.2 P.B.O.R.

Post and Pre-1.1.96 cases

- (a) The revision of service pension in terms of these modified orders in respect of PBOR retirees will not be beneficial except for the rank of JCOs granted Hony. Commission of Lt. and Captain as the service pension is calculated at the maximum of the pay scale including 50% of highest classification allowance, if any, of the rank and group in which paid.

(b) Ordinary family pension so calculated/consolidated under para 12 of this Ministry's letter dated 14.7.98 shall not be less than 30% of the minimum of the revised scale of pay introduced w.e.f. 1.1.96 for the rank held by the pensioner/deceased individual at the time of discharge/death. The revision of ordinary family pension in respect of those family pensioners who are in receipt of family pension @1275/- p.m. w.e.f. 1.1.96 will not benefit further under these modified orders i.e. where the minimum reckonable emoluments in the revised scale introduced w.e.f. 1.1.96 is Rs.4250/- p.m. or less.

(c) In post 1.1.96 cases, revision of pension/ordinary family pension will be undertaken by the PSA concerned on receipt of a nominal roll of affected cases from the Record Office concerned. However, in pre-1.1.96 cases, action to revise pension/family pension in terms of these orders shall be initiated by the PSA concerned on receipt of application (in duplicate) through RO concerned in the form annexed hereto. Those pensioners/family pensioners who have not so far submitted the necessary applications to facilitate revision of their pension/family pension and are desirous of availing the benefits under these orders, are required to submit application to their R.O. through P.D.A. concerned latest by 31.12.1999.

3.
4.
5.

Yours faithfully

Sd/-

Amrit Lal

Under Secretary to the Government of India"

13. In view of this circular it appears that now incumbent will be entitled to 50% of the minimum pay in the revised scale of pay introduced w.e.f. 01.01.1996 on their rank. The authorities may consider the matter whether petitioner is entitled to 50% of the pension of the rank held by him.

14. Therefore, in these circumstances, we are of the view that this petition has no merit and consequently same is dismissed along with the review application with above observations. Likewise, TA No. 175/2009 and TA No. 177/2009 are disposed of in terms of aforesaid order in RA No. 01/2009 in TA No. 78/2009 with above observations.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

November 19, 2009