

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
03.

O.A. No. 336 of 2011

Maj (Retd.) Rajesh Kumar Bhardwaj

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

With : O.A. Nos. 205/11 & 189/11

For petitioner:

Mr. S.R. Kalkal, Advocate. (OA Nos. 205/11)
Mr. S.S. Pandey, Advocate (OA Nos. 336/11 & 189/11)

For respondents:

Mr. V.S. Tomar, Advocate (OA No. 205/11)
Ms. Barkha Babbar, Advocate. (OA No. 336/11)
Ms. Anjana Gosain, Advocate (OA No. 189/11)

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
07.02.2012

Petitioner vide this petition has prayed that cut-off date mentioned in the Notification dated 29.09.2009 to the extent of pre and post distinctions of 01.01.2006 for grant of disability pension to those persons who have voluntarily retired prior to 2006 may be quashed.

Petitioner was commissioned in Indian Army on 27.12.1982 in Army Medical Corps after having been found fit in all respect. He served with various medical units of Indian Army from 1983 to 1996. During 1996, due to peculiar nature of service and hazardous atmosphere, petitioner suffered two disabilities namely "Tear Anterior Cruciate Ligament" and "Medical Meniscus (Left)" and subsequently he was placed in low medical category S1 H1 A3 P1 E1. On account of disabilities, petitioner's movements became restricted causing difficulty in performance of his normal duties, therefore, he sought

premature retirement after 15 years of service. Respondents vide order dated 07.01.1997 approved the request of the petitioner for premature retirement. A Release Medical Board was held at Army Hospital, Delhi Cantt on 17.02.1997 and disabilities of the petitioner was declared to be attributable to and aggravated by military service and it was assessed as 60% composite.

Petitioner preferred a representation for grant of disability pension, however it was rejected by the respondents vide letter dated 20.10.1997 stating that the petitioner was not entitled to disability pension in terms of Para 50 of the Pension Regulations (Part-I) as he sought voluntary retirement. He filed a writ petition before the Hon'ble Delhi High Court which was transferred to this Tribunal after its formation. The same was dismissed vide order dated 12.08.2010 taking into consideration the decision given by the Hon'ble Supreme Court in the case of **"Union of India & Others Versus Ajay Wahi SCC 2010 (11) 213"**. Thereafter, a review application was filed by the petitioner and it was brought to the notice of the court that vide notification dated 29.09.2009 Government has permitted the benefits of disability pension to the persons who retired/discharged on or after 01.01.2006 irrespective of the fact that they have sought voluntary retirement. The review application of the petitioner was disposed of vide order dated 13.09.2010 and it was left open for the petitioner to make a proper representation before the authority in pursuance of the Notification of the Government. Petitioner moved the representation dated 16.10.2010 which was rejected by the respondents vide letter dated 18.11.2010 in the light of aforesaid notification as petitioner was retired prior to 01.01.2006. Hence, petitioner filed the present petition challenging the notification dated 29.09.2009 and it is prayed that pre and

post distinctions of 01.01.2006 may be quashed from the above said notification being violation of Article 14 of the Constitution.

A reply has been filed by the respondents and they have only taken the plea of financial constraints. It is submitted that on the basis of recommendations of Sixth Central Pay Commission, the Government of India, Ministry of Defence issued a Policy Letter dated 29.09.2009 in which the cut-off date is fixed as 01.01.2006 i.e. persons who had proceeded on premature retirement at their own request on and after that date will be entitled to disability pension. This cut-off date has been fixed, so that Government is not burdened with extra financial liability.

We have heard learned counsels for the parties and perused the record. Learned counsel for the petitioner submitted that there is no distinction between the persons who have sought voluntary retirement prior to 01.01.2006 or subsequent to it. The services rendered by these personnel are to the nation and to make an artificial distinction on the basis of cut-off date cannot be sustained as it is a serious violation of Article 14 of the Constitution as the persons similarly situated have been treated differently. In this connection, learned counsel for the petitioner has invited our attention to a decision given by the Hon'ble Supreme Court in the case of **"Union of India & Anr. Versus S.P.S. Vains & Ors. 2008 (9) SCC 125"** as well as a recent judgment delivered in the case of **"K.J.S. Buttar Versus Union of India & Anr. (2011) 11 SCC 429"**. It may be relevant to mention that in the case of **"Union of India & Anr. Versus S.P.S. Vains & Ors. (Supra)"**, their lordships reiterated the principle laid down in the case of **"D.S. Nakara Versus Union of India 1983(1) SCC 305"**. Despite the fact that this judgment of **"D.S. Nakara Versus Union of India (Supra)"** has been considered in the various

judgments of Hon'ble Supreme Court including the Constitutional Bench judgment given in the case of **"Indian Ex-Services League and Others Versus Union of India (1991) 2 SCC 104"**. Still their Lordships reiterated the principles of **"D.S. Nakara Versus Union of India (Supra)"**.

A similar question came up before us in the case of **"Lt. Col. P.K. Kapur (Retd.) Versus Union of India bearing OA Nos. 139 of 2009 decided on 30.06.2010"** and after reviewing all cases on the subject and considering the law of precedent held that the latest judgment in point of time has to be accepted in the event of conflict of judgments between the two coordinating bench, decision given in the case of **"Union of India & Anr. Versus S.P.S. Vains & Ors. (Supra)"** hold field till it is reviewed. In the case of **"Union of India & Anr. Versus S.P.S. Vains & Ors. (Supra)"** their Lordships have held that this kind of artificial distinction within the similarly situated person by putting a cut-off date cannot be said to be rational and reasonable. Following that judgment, we have struck down the notification dated 04.05.2009 to the extent of pre & post distinction of 01.01.2006 in the case of **"Lt. Col. P.K. Kapur (Retd.) Versus Union of India (Supra)"**.

After that in a recent judgment delivered Hon'ble Supreme Court in the case of **"K.J.S. Buttar Versus Union of India and Anr. (Supra)"** their Lordships have further observed that distinction based with regard to *Article 14- Disability pension- Appellant, an ex-captain in Indian Army- Commissioned on 12.01.1969- Suffered serious permanent injuries during service- Invalidated out of service- Injury held attributable to military service and degree of disability assessed at 50 %- Released from service in Low Medical Category on 10.04.1997- Granted disability pension w.e.f 26.7.1979 - Prayer for disability to be treated at 75% instead of 50% as per Ministry of*

Defence letter dated 31.01.2001- Respondent contended that the disability cannot be enhanced to 75% as the relevant provision being para 7.2 of Government of India, Ministry of Defence, letter dated 31.01.2001 is applicable only to those officers who were invalidated out of service after 1.1.1996. – Appellant invalidated much before 1.1.1996. Held, such restriction of the benefit is violative of Article 14 and hence illegal. Deoki Nandan Aggarwal's case relied [JT 1991 (3) SC 608]. In case of liberalization of an existing scheme, all are to be treated equally as was the case in hand. But if it is introduction of a new retrial benefit, its benefit will not be available to all. Letter of the Ministry of Defence dated 31.01.2001 is only liberalization of an existing scheme. **State v. Justice S.S. Dewan** [JT 1997 (5) SC 26].

HELD

The restriction of the benefit to only officers who were invalidated out of service after 1.1.1996 is violative of Article 14 of the Constitution and is hence illegal. We are fortified by the view as taken by the decision of this Court in **Union of India & Anr. v. Deoki Nandan Aggarwal** [JT 1991 (3) SC 608]. (Para 11)

The appellant was entitled to the benefit of para 7.2 of the instructions dated 31.01.2001 according to which where the disability is assessed between 50% and 75% then the same should be treated as 75% and it makes no difference whether he was invalided from service before or after 1.1.1996. Hence the appellant was entitled to the said benefits with arrears from 1.1.1996, and interest at 8% per annum on the same. (Para 14).

In this case, their Lordships have considered the decisions given in the cases of Union of India & Anr. Versus C.S. Sidhu JT 2010 (3) SC 432, Union of India & Anr. Versus S.P.S. Vains & Ors. (Supra), State of

Punjab Versus Justice S.S. Dewan JT 1997 (5) SC 26 and Union of India

& Anr. Versus Deoki Nandan Aggarwal JT 1991 (3) SC 608 and after

considering these judgments their Lordships have concluded as aforesaid.

This liberalisation of pension was done on the recommendation of 5th Central Pay Commission.

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 Sixty 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

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 Sixty Central Pay Commission vide Para 5.1.69 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/Misc/AG/PS-4 (L)/BC*

*All Legal Cells
All line Dtes*

*GRANT OF DISABILITY PENSION TO PREMATURE RETIREMENT
CSES 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 PROB files a court case to claim disability pension which was denied to him merely because he had proceeded on Pre-Mature 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 affective till MoD/D(Pen/Legal) formulated and issues comprehensive Govt orders.*

4. *It is re-iterated 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 offers 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 lime 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 Pre-Mature 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} struck 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. Petition is accordingly allowed. No order as to costs. Both the connected cases bearing OA Nos. 336/2011 and 189/2011 stand disposed of in the light of this order. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
February 07, 2012
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