

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

05.

M.A. No. 191 of 2012
IN O.A. No. 489 of 2011

Lt. Col. P.K. Kapur (Retd.)

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Petitioner in person.
For respondents: Mr. Ankur Chhibber, Advocate.

CORAM:
HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
03.04.2012

O.A. No. 489 of 2011 & M.A. No. 191 of 2012

1. This petition was adjourned sine die awaiting the decision of the Hon'ble Supreme Court given in the case of Union of India v. Lt. Gen. Oberoi by the order dated 19th March 2012. The Petitioner has moved an additional application MA No. 191 of 2012 and submitted that this matter should be heard and decided as per the decisions having bearing on the subject and he is insisting that this matter should be heard without awaiting the decision of the Hon'ble Supreme Court. Therefore in these circumstances we have no option but to accede to his request to take up this matter for final decision.

2. The Petitioner by this petition has prayed that the Respondents may be directed to fix the war injury pension i.e. service element and disability element as per benefits prescribed for invalided out cases as per aforesaid latest orders of the Hon'ble Supreme Court, AFT (PB) and AFT Chandigarh Bench and after striking down words "retired/invalided out of service on or after" 1st January 2006 in para 4 of the order dated 30th October 2009. He has also prayed that w.e.f. 1st January 2006 till date full service element pension i.e. 50% of revised minimum reckonable emoluments of a Lt. Col., Rs.25,700/- per month w.e.f. 1st January 2006 with 8% interest since linkage of authorisation of full service pension to 33 years qualifying service has been dispensed w.e.f. 1st January 2006 consequent to implementation of recommendations of 6th Central Pay Commission. He has also prayed that from 1st December 1989 (day after retirement) till 31st December 1995 (30% allowed assessed disability) at the rate of 30% of Rs.4,950/- (reckonable emoluments last drawn) i.e. Rs.1485/- per month as per rates prescribed for invalided out cases vide para 18 of policy letter of the Respondents dated 30th October 1987 with 8% interest. He has further prayed that w.e.f. 1st January 1996 till 31st December 2005 (30% medically assessed disability broad banded/rounded of to 50% for computation of pension.) 50% of Rs. 15,100/- (minimum revised emoluments of a substantive time scale Lt. Col. i.e. Rs.7,350/- per month with 8% interest at rates prescribed for invalided out cases. He has further prayed that w.e.f. 1st January 2006 till date (30% assessed disability broad banded/rounded of to 50% for computation of disability pension) i.e. 50% of Rs.51,400/- (minimum revised emoluments of a Lt. Col)= Rs.25,700/- per month with 8% interest with suitable costs.

3. The Petitioner filed an earlier petition **Lt. Col. P.K. Kapur (Retd) v. Union of India (O.A. No. 139 of 2009)** before us which was disposed of on 30th June 2010 and in that we have already observed in para 23 that "As a result of above discussion we hold that notification 16(6)/2008(1)D(Pension/Policy) dated 4.5.2009 is struck down to the extent of pre and post distinction i.e. pre 1.1.2006 and post 1.1.2006 and likewise the distinction made in the circular No. 16(6)/2008(1)D(Pension/Policy) dated 4.5.2009 para 2.1 is also struck down and respondents are directed to give the benefit of disability pension to all the members of three forces viz. Army, Air Force and Navy including persons below officers rank on equal basis without making distinction between pre and post 1.1.2006. Respondents are directed to work-out the arrears of the pension from the date of filing of this petition and the difference in amount shall be paid to the petitioner with 12% interest. Petition is allowed. No order as to costs."

4. So far as the distinction between pre and post is concerned that has been already struck down by us. Now the only question before us is whether the Petitioner is entitled to war injury pension or not. Earlier when this petition came up before us our attention was not invited to the case of the Petitioner which was decided by Hon'ble Supreme Court in **P.K. Kapur v. Union of India (2007) 9 SCC 425** wherein all issues raised by Petitioner has already been disposed of. The Hon'ble Supreme Court after considering the matter in para 13 with regard to Petitioner's rounding up and grant of a war injury pension and invalidation out from service, has summed up in para 13 and 14 of the order which read as under:

"13. It is lastly urged by the appellant that he has not been paid war injury pension at the current rate. In this connection, he submitted that under the rules for casualty pensioners invalidation from service is a necessary condition for the grant of disability pension. If a person is released from service in a lower medical category than what he was at the time of recruitment, he would be treated as invalided from service. The appellant contended that he was released in a lower medical category from service on 30-11-1989 than what he was at the time of recruitment and, therefore, he should be treated as invalided from service with effect from the date of release for the purpose of grant of disability pension.

14. We do not find any merit in the third submission. The appellant retired on 30-11-1989 on superannuation. He was never invalided. He now claims to be invalided out of service. Having stood retired from service after completing full tenure of service, the appellant cannot now claim that he was invalided out of service. The concept of invalidment applies to cases in which the tenure of service is cut short due to invalidment on account of war injury or disability. The concept of invalidment does not apply to cases where an officer completes his tenure of service and retires on attaining the age of superannuation. Therefore, there is no merit in the third contention raised by the appellant."

5. The Lordship has held that so far as the case of Petitioner is concerned he retired on 30th November 1989 on superannuation and he was never

invalided out of service and he now claims to be invalided out of service. The Lordship has observed that having stood retired from service after completing full tenure of service, the appellant cannot now claim that he was invalided out of service. The concept of invalidment applies to cases in which the tenure of service is cut short due to invalidment on account of war injury or disability. The concept of invalidment does not apply to cases where an officer completes his tenure of service and retires on attaining the age of superannuation. In the present case the Petitioner has retired from service after superannuation and therefore he would not be treated as invalided out of service. Since he could not be treated as invalided out of service therefore all the other reliefs sought by him cannot be granted to him. This observation in the case of Petitioner operates as res judicata. The Petitioner appearing in person has invited our attention to the judgment of the Hon'ble Supreme Court in the case of **K.J.S. Buttar v. Union of India & Anr. (JT 2011 (3) SC 626)**. So far as the Petitioner is concerned, this judgment is of no avail because all factual as well as legal issues pertaining to Petitioner stands disposed of. In **Buttar's** (supra) case this judgment was not brought to notice of the Hon'ble Supreme Court. Therefore the decision in **Buttar's** case is per incuriam so far as Petitioner is concerned. The judgment delivered in case of Petitioner will stand and all his prayers cannot be sustained.

6. Consequently, we do not find any merit in this petition and same is dismissed with no order as to costs.

7. In case the orders passed by us in **Lt. Col. P.K. Kapur (Retd) v. Union of India (O.A. No. 139 of 2009)** has not been implemented so far then the same may be implemented forthwith. No order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
April 03, 2012
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