

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

Suppl.  
1.

OA 48/2018

Ex SPO Desh Raj

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Mohammed Mujeeb, Advocate

For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER  
21.12.2023

Vide our detailed order of even date, we have disposed off the OA 48/2018. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(LT GEN C.P. MOHANTY)  
MEMBER (A)

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ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :-

*"(a) To declare the action of the respondents as unjust, arbitrary and illegal; and*

*(b) To direct the respondents to pay the war injury pension to the applicant with effect from his date of retirement as already sanctioned at the rate of 60% by rounding it off to 75% in terms of policy letter dated 31.01.2001.*

*(c) To direct the respondents to classify the release of the Applicant as "Invalided Out" instead of the Normal discharge, since his disability caused has been attributable to service.*

*(d) To grant an interest of 12% on the delayed payment of the War Injury Pension and disability pension and revision of disability element of the War Injury pension with effect from 31.01.2011, that is the date of retirement of the Applicant; and*

*(e) To award exemplary costs upon the Respondents in the facts and circumstances of the record and the severe mental trauma which the Applicant was made to go through due to illegal actions of the Respondents, and*

*(f) To pass such further order or orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."*

### BRIEF FACTS

2. The applicant was enrolled in the Indian Navy on 30.01.1996. While on board INLCU-37, the applicant while participating in "Operation Amphex-03" met with an accident and suffered injuries leading to amputation of his left leg, below knee level. Commanding Officer, INLCU-37, C/o Navy Office, Port Blair classified the injury as 'Battle Casualty' vide letter dated 26.03.2004. The medical board considered him fit for service with employability restrictions and the applicant continued in service for more than 07 years post his injury on 23.12.2003. On 17.01.2009, the applicant submitted his unwillingness for further service on completion of initial engagement and was released from service on 31.01.2011.

3. The Release Medical Board (RMB) has considered the applicant's disability "Crush Injury Lt Lower Limb with Below Knee Amputation" as attributable but not aggravated by service with 60% disability for life. Accordingly, the applicant was granted 60% Disability Pension for life vide PPO No 09/97/B/D/0058/2011 dated 31.01.2011.

4. The applicant, therefore, submitted a representation dated 30.06.2015 requesting for grant of war injury pension

and its broad banding. The same was rejected vide dated 16.07.2015 stating that his disabilities are not considered as 'War Injury' and he is only entitled to Disability Pension at the rate of 60%. Thereafter, aggrieved with the order of competent authority after denying the benefit of War Injury Pension and Disability Pension, even after issue of the Battle Casualty Certificate the applicant sent an Appeal to the respondents vide letters dated 11.05.2017 and 29.05.2017 praying for grant of War Injury Pension and its broad banding.

5. Respondents vide a letter dated 18.08.2017 denied broad banding of war injury pension of the applicant but issued a corrigendum PPO Number 09/97/B/D801/2017 dated 28.08.2017 allowing the applicant 'War Injury Pension' at the rate of 60% with effect from his date of retirement.

6. On 12.10.2017 the applicant again submitted a representation to the respondents to consider his case as invalidment instead of discharge and grant broad banding of war injury pension at 75% of which reply has not been received from the respondents at the time of filing of this OA. Aggrieved by the response of the respondents, the applicant has filed the present original application. In the interest of justice, we take up the OA in accordance with section 21(1) of the AFT Act for consideration.

### CONTENTIONS OF THE PARTIES

7. The learned counsel for the applicant submit that the applicant suffered a crush injury while deployed on board INCLU 37 during Operation Amphex-03 which led to amputation of left leg below knee and has been categorised as "Attributable to Service", hence he is entitled for war injury pension in terms of Category (e) to the Para 4.1 of the Government of India Ministry of Defence letter Number 1(2)/97/D(Pen-C) dated 31.01.2001.
8. The Learned Counsel for the applicant placed reliance on the judgement dated 03.08.2012 of the Armed Forces Tribunal, Chandigarh Bench in case of *Ved Prakash & Others Vs UOI (OA No 1960/2002 and tagged matters)*. Placing reliance on Armed Forces Tribunal, Kolkata Bench Judgement in *Manoj Kumar Vs UOI (TA No 50/2011)* decided on 17.07.2023, Learned Counsel submits that in all these cases, the court directed that disability pension as well as rounding off the disability as per Government of India Ministry of Defence letter Number 1(2)/97/D(Pen-C) dated 31.01.2001 is permitted in all kinds of release. The Learned Counsel also submits that the Hon'ble Apex Court Order in the matter of *KJS Buttar Vs UOI and ANR 2011 (4) Scale in Civil Appeal No 5591/2006* ordered that the cases of invalidment out of service or deemed invalidment, both are eligible for rounding off of disability pension. The learned counsel further contended

that the applicant's injury falls under Category 'E' clause (i) of the policy letter dated 31.01.2001 and be declared as 'Battle Casualty' and, therefore, the applicant is entitled for grant of War Injury Pension.

9. Per contra, while the learned counsel for the respondents, has not disputed the facts of the case regarding the disability and crush injury as submitted by the applicant, however, the learned counsel controverted the contentions made by the learned counsel for the applicant that the injury sustained by the applicant is covered under Category 'E' of the MoD letter dated 31.01.2001 and needs to be declared as 'Battle Casualty'. The learned counsel submitted that after the injury the medical board was constituted which found the applicant fit for service with employment restrictions and the applicant continued in service for a further period of more than 07 years of service post his injury on 23.12.2003. The applicant was released from service on 31.01.2023 due to his unwillingness for further service.

10. The Learned counsel further argues that the RMB considered disability 'CRUSH INJURY LT LOWER LIMB WITH BELOW KNEE AMPUTATION' as attributable but not aggravated to service with the assessment of disability at 60% for life long at the time of discharge, therefore, the applicant was granted disability pension @ 60% pm for life w.e.f 01.02.2011 vide PPO dated 31.03.2011.

11. The learned counsel also submitted that as per policy in vogue during the time of discharge of applicant, the benefit of broad banding was not present and that the applicant is eligible to receive benefit of broad banding of War Injury Element of Disability pension from 60% to 75% w.e.f 01.01.2016 as per GOI Mod letter No 17(01)2017/(02)/D(Pension Policy) dated 23.01.2018 and PCDA, Allahabad Circular No 596 dated 09.02.2018.

#### ANALYSIS

12. We have heard the learned counsels for the parties and have perused the record produced before us.

13. On a perusal of documents, we find that in the present case, it is not in dispute that on 23.12.2003, the applicant has suffered a crush injury while deployed on board INCLU-37 during Operation Amphex-03 which led to amputation of leg (left) below knee. For this injury, the applicant was placed in low medical category and recommended fit for service with employability restrictions and the applicant continued in service for more than 07 years of service post injury and was finally released from service on 31.01.2011.

14. It is further not in dispute that the injury was confirmed to have occurred during the performance of naval exercise which was held 'Attributable to Naval Service' and assessed the same @60% for life long and he was granted Disability Pension @ 60% from 01.02.2011. Later on, the injury sustained by the applicant was



classified as "Battle Inoculation Training Exercise" and he was issued Battle Casualty Certificate by Bureau of Sailors on 20.04.2017 and granted war injury element of disability pension vide Corrigendum PPO dated 28.08.2017 placed at Annexure- R-5 15. It is clear that applicant was awarded War Injury Pension w.e.f. from 28.08.2017, in as much as the applicant was discharged on 31.01.2011. Hence, for a disability that occurred while applicant was in service, he was discharged with the said disability, while being granted disability element from the date of discharge, he is entitled to receive the War Injury Element from the date of his discharge instead of date of issuance of Corrigendum PPO. Therefore, we are of the view that the applicant is entitled to grant of War Injury Element of Disability Pension from the date of discharge, with the benefit of 60% rounded off to 75% in view of the settled law laid down by the Hon'ble Supreme Court of India in Civil Appeal 418/2012 dated 10.12.2014 titled as *UOI & Ors. vs. Ram Avtar*.

16. Now, the only question in this case which is left to be considered is whether the applicant as discharged should be considered as Invalided out even when he was discharged on completion of normal tenure of service?

17. An analysis of documents placed on record make it clear that the initial terms of engagement of the applicant were over and the



applicant has himself granted his unwillingness to continue in service beyond initial terms of engagement. In as much as, the terms of engagement of the applicant was not cut short due to his disability and taking note of the fact that he has served for seven years (07) post his disability, we are in the view that this is not a fit case for invalidation from service. In view of the above, we dispose off the present OA with the direction to the Respondents to grant War Injury Pension @60% to the applicant from the date of discharge with the benefit of broad banding @ 75%.

18. The respondents are thus directed to issue the corrigendum PPO to the applicant and to pay the arrears of the War Injury Pension as directed in Para 17 hereinabove, within a period of three months of this order, and in the event of default the arrears shall carry interest @ 6% per annum till the date of payments.

Pronounced in the open Court on the 21<sup>st</sup> day of December, 2023.

[LT GEN CP MOHANTY]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/akc/