

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 1438/2018 with MA 1935 & 1936/2018

Ex Nk Ami Lal		Applicant
Versus		
Union of India and Ors.		Respondents

For Applicant	:	Mr. J.P. Sharma, Advocate
For Respondents	:	Mr. Shyam Narayan, Advocate

CORAM
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

ORDER

MA 1935/2018

This is an application filed under section 22 (2) of the AFT Act, 2007 seeking condonation of delay of **7471** days in filing the present OA. In view of the verdicts of the Hon'ble Supreme Court in the matter of **UOI & Ors. v Tarsem Singh** 2009 (1) AISLJ 371 and in **Ex Sep Chain Singh v UOI & Ors.** (Civil Appeal No. 30073/2017). In view of the reasons explained in the MA and in the interest of justice, MA 1935/2018 is allowed despite opposition on behalf of the respondents and the delay of **7471** days in filing the OA 1438/2018 is thus condoned. The MA is disposed of accordingly.

MA 1936/2018 IN MA 1935/2018

This is an application filed on behalf of the applicant seeking condonation of delay of **20** days in filing the MA 1935/2018. In the interest of justice, the MA 1936/2018 is allowed and the delay of **20** days in filing the MA 1935/2018 is condoned.

OA 1438/2018

This application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, by the applicant who is a ret'd Nk from the Army and is aggrieved by the rejection of his claim for grant for Disability Element (DE) of pension as he had been granted one-time compensation in lieu of DE. He has made the following prayers:

(a) To quash and set aside the impugned orders dated 16.07.2018, 20.05.1993 & 15.07.2013 as Annexure A1 (Colly) Impugned Order.

(b) Direct Respondents to grant DE of pension @30% wef 01.02.1998 and further benefit of rounding off of disability @30% to @50% wef 01.02.1998 for life in terms of Gol, MoD letter dated 31.01.2001 and law settled by Hon'ble Supreme Court in Civil Appeal No 418/2012 titled UOI & Ors v. Ram Avtar vide order dated 10.12.2014 along with @10% interest p.a.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

Brief Facts of the Case

2. The applicant was enrolled in the Indian Army on 30.01.1978, and subsequently discharged from service on 31.01.1998, in accordance with the provisions of Army Rule 13 (3) III (i), having completed a tenure of 20 years and 02 days. However, the applicant while serving with the 16 RAJ RIF in Jaipur sustained injuries on 17.11.1987, during a football match which were documented in the Injury Report dated 07.02.1989. Commander 91 Infantry Brigade endorsed the recommendation that the injury be considered attributable to military service in a peace area. Subsequently, the applicant was placed in a low medical category CEE (Permanent) with effect from 16.08.1989 for "FRACTURE TIBIA AND FIBULA (RT) LEG NO-828, E885". A Compensation Medical Board convened on 08.07.1991 at Army Hospital, Delhi Cantt, assessed the applicant's disability "FRACTURE TIBIA AND FIBULA (RT) LEG N-828, E-885," as attributable to military service and assessed it @ 30% for life. Consequently, RAJRIF Records issued directives to 16 RAJRIF for a compensation payment of Rs 28,545 as approved by PCDA (P) Allahabad through PAO (OR) RAJ RIF, vide letter

RNE/DP/2872730/119 dated 15.07.1993. The applicant received a one-time compensation payment in lieu of the disability element at the assessed rate of Rs 28,545 based on the findings of the Compensation Medical Board. In accordance with AFSMF-18, dated 26.06.1997, a recommendation was made for the applicant's release in Medical Category 'CEE' (Permanent) for life. Subsequently at the time of discharge when the applicant was brought before the Release Medical Board(RMB) on 10.07.1997, it reaffirmed the attributability of the disability to military service, affirming the assessment @ 30% for life. Since the applicant was granted a one-time compensation and not disability pension, he has filed the present OA seeking eligible disability element in lieu of lump sum compensation.

Arguments by the Counsel for the Applicant

3. The counsel stated that the applicant was discharged from service on 31.01.1998, and underwent a Release Medical Board on 15.07.1997. However, the competent authority did not grant the DE of pension based on the said RMB but instead awarded a one-time compensation of Rs 28,545. The learned counsel for the applicant stated that the grant of one-time compensation in lieu of Disability Pension was unjust, arbitrary, and illegal, given that the applicant

- neither underwent a RMB nor was released from service. The
- counsel further stated that the applicant is entitled to the DE of Pension @ 30% effective from 01.02.1998, along with the benefit of rounding off from 30% to 50%, as per the Government of India, Ministry of Defence letter dated 31.01.2001.

4. The learned counsel stated that the applicant served a Legal Notice cum-Representation to all respondents, dated 27.06.2018 (Annexure A-5) for grant of disability pension but the same was rejected vide letter No RNE/DP/2871730 dated 16.07.2018, issued by RAJRIF, Records (Annexure A-1 Impugned Order (Colly)).

5. The learned counsel for the applicant placed reliance on Regulation 173 of Pension Regulations for the Army 1961, arguing that a disability pension, comprising service element and disability element, may be granted to an individual invalided out of service due to a disability attributable to or aggravated by military service in non-battle casualty. Additionally, reliance was placed on Regulation 176 of Pension Regulations for the Army 1961, which stipulates that if compensation is paid for a disability under circumstances where a disability pension is admissible, the disability pension amount shall be reduced by an equivalent sum, ensuring that the residual pension does not fall below the service element.

6. Furthermore, the counsel stated that the disability of the applicant is treated as 30% for life, the counsel contends that this treatment contradicts para 7.20 of Govt of India, Ministry of Defence letter No 1(2) /97/D(Pen-C) dated 31.01.2001. The counsel references the Tribunal's decisions and the settled law by the Hon'ble Supreme Court in Civil Appeal No 418/2012 titled **UOI & Ors** Vs **Ram Avtar**, dated 10.12.2014, affirming entitlement to rounding off of disability pension, even in cases of voluntary retirement or superannuation.

7. The learned counsel for the applicant further contends that Government of India, Ministry of Defence, issued a policy via letter dated 15.09.2014. Based on this, PCDA (P) Allahabad issued Circular No 529 dated 13.10.2014, regarding the "Rationalisation" of Casualty Pensionary Awards for the Armed Forces Officer and PBOR invalided out from service prior to 01.01.1996, extending the benefit of broad banding of the percentage of disability/war injury, as reflected in Annexure A-6 (Colly).

8. The learned counsel for the applicant further placed reliance on Supreme Court's decision in **Union of India & Ors** V **Tarsem Singh** (2009 1 AISLJ 371) and **Ex Sep Chain Singh Thr LR.**

- 30073/2017 order dated 11.12.2017.

Arguments by the Counsel for the Respondents

9. The counsel for the respondents stated that the applicant, having enlisted in the Army on 30 Jan 1978, was honourably discharged from service on 31.01.1998, as per Item 13 (3) III (i) of Army Rules, 1954, upon completion of 20 years and 02 days of dedicated service. It was underscored that the applicant had been accorded the benefit of a Service Pension, duly sanctioned through PCDA (P) Allahabad PPO No 5/043585/97 (Army) dated 22.09.1997.

10. The counsel emphasized that the applicant, possessing full cognizance of the repercussions, deliberately accepted disability compensation, fully cognizant that such acceptance would foreclose any subsequent entitlement to the disability element associated with the same disability, and therefore a one-time compensation of Rs 28,545 was disbursed following a comprehensive disability assessment conducted by the Compensation Medical Board at Army Hospital, Delhi Cantt, on 08 Jul 1991, attributing the disability FRACTURE TIBIA AND FIBULA (RT) LEG N-828, E-885 @ 30% for life to military service.

11. Furthermore, it was underscored that subsequent to the disability assessment, the applicant was retained in service through a shelter appointment until the conclusion of his service tenure. However, during the discharge process, the Release Medical Board convened at 177 Military Hospital on 1@ Jul 1997 reiterated the disability percentage of 30%, reaffirming its attribution to military service. The counsel contended that, in light of the prior compensation, processing the case for disability pension through PCDA(P), Allahabad, was deemed unnecessary.

12. The counsel for the respondents highlighted the conspicuous silence of the applicant for over two decades, only breaking it by serving a Legal Notice dated 27.06.2018 through his counsel which was duly replied by RAJRIF Records, vide their letter dated 16.07.2018.

13. In reference to the provisions outlined in Army Order 17/89, the counsel argued that the applicant stands ineligible for the disability element of pension as the order unequivocally delineates that once compensation has been disbursed in lieu of the disability element, any subsequent claim for the disability element associated with the same disability is categorically precluded. The disability, for which compensation was judiciously

- provided, is expressly excluded from any future eligibility for pensionary benefits or relief.

14. The counsel for the respondents emphatically asserted the lack of substance in the applicant's OA, contending that it fails to align with the governing rules and the aforementioned grounds. It was categorically asserted that the issue of granting Broad Banding benefits or rounding off benefits is irrelevant in this particular case.

15. Finally, the counsel contended that the applicant retired in 1998, and the delay of more than 20 years in initiating the present application renders it ripe for dismissal on the grounds of inordinate delay and laches alone. The counsel emphasized the applicant's unequivocal awareness, at the time of accepting disability compensation, of the consequential bar on any subsequent entitlement to the disability element for the same disability.

Consideration

16. Heard learned counsel for both sides and perused the records. It is not disputed that the applicant while serving with 16 RAJ RIF in Jaipur sustained severe injuries on 17.11.1987, during a football

match. It is also not disputed that applicant's disability was assessed @ 30% for life attributable to military service vide Compensation Medical Board held at Army Hospital, Delhi convened on 08.07.1991. The applicant then received a lump sum compensation of Rs 28,545, as approved by PCDA (P) Allahabad through PAO (OR) RAJ RIF, vide letter RNE/DP/2872730/119 dated 15.07.1993. Now the question which arises for our consideration is:

- (i) Whether the applicant is entitled to be paid disability element of pension for a disability for which he has already been paid a lump sum compensation?

17. Now since the applicant retired from service in 1998 and the injury sustained by him was in the year 1987 therefore, it is important to consider Para 14.4 of the GOI Letter No. 1 (5)/87/D (Pensions/Services) dated 30.10.1987 for *Implementation of the Government decisions on the recommendations of the Fourth Central Pay Commission regarding pensionary benefits for the Armed Forces officers and personnel below officer rank retiring or dying in harness on or after 1.1.1986*, which is reproduced as under:

"COMPENSATION IN LIEU OF DISABILITY ELEMENT

14.4 In case a person belonging to the Armed Forces is found to have a disability which is (i) accepted by the competent

authority as attributable to/aggravated by service factors, and (ii) assessed at 20% or more for life but the individual is retained in service, despite such disability, he shall be paid compensation in lump sum (in lieu of the disability element) equal to the capitalised value of disability element. For this purpose, the rank for disability element shall be the rank held at the time of onset of the disability and age next birth-day will be reckoned with reference to the date of onset of disability with loading to age, if any, recommended by the Medical Board. Once a compensation has been paid in lieu of the disability element, there shall be no further entitlement to the disability element for the same disability. Such disability shall also not qualify for grant of any pensionary benefit or relief subsequently."

18. Furthermore, Army Order 17/89, states that once lump sum compensation in respect of war injury has been accepted by the applicant in lieu of disability element, he is not entitled to further disability element. For convenience sake, relevant extract of Army Order 17/89 is reproduced as under:-

"1.....Once a compensation has been paid in lieu of the disability-element, there shall be no further entitlement to the disability-element, for the same disability. Such a disability shall also not qualify for grant of any pensionary benefit or relief, subsequently."

19. Furthermore the reliance placed by the applicant in MA 270/2020 decided on 04.02.2020 upon the Policy Letter No 2(2)/2011/D (Pen/Pol) dated 26.12.2011 regarding *Payment of Ex-Gratia Lump sum compensation to Defence Service Officers and Personnel Below Officer Rank who are invalidated out of service on account of disability attributable to or aggravated by Military Service* issued by GoI, MoD and Circular No 477 dated 07.02.2012 issued by PCDA (P) Allahabad for seeking ex-gratia lump sum compensation in addition to disability element is held as irrelevant as this policy is applicable to those individuals who were invalidated out of service, unlike the applicant's case, as he was discharged from service after completion of his service tenure and the Release Medical Board proceedings dated 10.07.1997 (Annexure R4) clearly states that the "Release Not Solely on Medical Grounds".

20. Furthermore as per the Acceptance Certificate dated 08.07.1991, duly signed by the applicant which is as per Appx 'A' to AO 17/89 it must be assumed that the applicant was fully cognizant that such acceptance would foreclose any subsequent entitlement to the disability element associated with the same disability.

Hence, as per the above-mentioned provisions and policies it is held that applicant is neither entitled to disability element of pension nor the ex- gratia lump sum compensation.

Conclusion

21. Thus, in view of the above, we are of the view that the applicant is neither entitled to ex-gratia lump sum compensation nor disability element of pension. Accordingly this OA is dismissed.

22. No order as to costs.

23. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 14th day of March, 2024.

**(JUSTICE RAJENDRA MENON)
CHAIRPERSON**

**(LT GEN P.M. HARIZ)
MEMBER (A)**

/ashok/