

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

19.

OA 1669/2019

Ex Dfr Mukesh Kumar Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. VS Kadian, Advocate
For Respondents : Mr. Niranjana Das, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
15.05.2024

The applicant vide the present OA makes the following prayers :-

"8.(a) Pass appropriate directions to issue PPO for Service Pension, Disability Pension and grant retiral benefits (i.e. Gratuity, commutation) to the applicant with consequential benefits and arrears be paid with interest @12% p.a.

(b) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstance of the case."

In view of the averments made in Para 7 of the counter affidavit filed by the respondents dated 26.09.2020, it is brought forth that service pension and gratuity have already been paid to the applicant as pensionary benefits as stated therein to the effect :-

"7. That thereafter, LPC-Cum-Data Sheet alongwith its connected documents were processed to PCDA(P), Allahabad on 25 Jan 2019 through courier for notification of PPO (Pension Payment Order) for grant of Service Pension. PCDA(P), Allahabad has raised certain observations in the claim and same has been returned to Armoured Corps Records on 03 Feb 2019. Armoured Corps Records resubmitted the claim duly rectified the observation to PCDA (P), Allahabad for notification of PPO. Accordingly, PCDA(P), Allahabad has issued PPO No. 151201902163 dated 23 Dec 2019 (Photocopy annexed as annexure R-VIII) duly granted the following pensionary benefits :-

(a) Service Pension - Rs 21800/- per month w.e.f 01 Mar 2017 for life.

(b) Gratuity - Rs 540317/-

Copy of the PPO has already been forwarded to CPPC/PDA of the applicant vide Armoured Corps Records letter No. 15471450F/DDS/PPO dated 23 Jan 2020 (Photocopy annexed as Annexure R-IX) with a copy to the applicant."

Copy of the PPO to that effect is also placed on record by the respondents as Annexure R-VIII issued on 23.12.2019. Thus, the prayer in relation to para 8(a) of the OA 1669/2019 has been redressed already. The only prayer that now remains to be considered is in relation to the grant of the disability element of pension in relation to the disability of the applicant of ***"Retro Bulbar Optic Neuritis (Both Eye) (H-46)"*** which as per the RMB dated 07.02.2017 is indicated to have been assessed with a percentage of disablement of 5% for life. In terms of the verdict of

the Hon'ble Supreme Court in *UOI & Ors. vs. Wing Commander S P Rathore* in Civil Appeal No. 10870/2018 vide verdict dated 11.12.2019, it has been expressly observed that in terms of Regulations 37(a) of the Defence Service Pension Regulations for the Air Force, 1961, it is expressly stipulated to the effect :-

"37(a) An officer who is retired from air force service on account of a disability which is attributable to or aggravated by such service and is assessed at 20 percent or over may, on retirement be awarded disability pension consisting of a service element and a disability element in accordance with the regulations in this section."

which is analogous to Para 37 of the Pension Regulation for the Army Part-I (2008) which reads to the effect :-

"37(a) An officer who retires on attaining the prescribed age of retirement or on completion of tenure, if found suffering on retirement, from a disability which is either attributable to or aggravated by military service and so recorded by Release Medical Board, maybe granted in addition to the retiring pension admissible, a disability element from the date of retirement if the degree of disability is accepted at 20% or more.

(b) The disability element for 100% disability shall be at the rate laid down in Regulation 94(b) below. For disabilities less than 100% but not less than 20%, the above rates shall be proportionately reduced. Provisions contained in Regulation 94(c) shall not be applicable for computing disability element."

and Para 8.2 of the MoD letter No. 1(2)/97/D(Pen-C) dated 31.01.2001, it is expressly stipulated to the effect :-

“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, Invaliding Medical Board as accepted by the Pension Sanctioning Authority, shall reckon for computing disability element.”

indicating thereby that where the disability element is less than 20%, the grant of payment of the disability element of pension is not permissible. In view thereof, the prayer made by the applicant for the grant of the disability element of pension through the present OA 1669/2019 qua prayer clause 8(b) is declined and dismissed.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

Yogita