

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

OA 1756 /2017

Lt Col Shriman Narayan (Retd) ... Applicant
Versus
Union of India and Ors. ... Respondents

For Applicant : Mr. V.S. Kadian, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P.MOHANTY, MEMBER (A)

ORDER

This application has been filed under Section 14 of The Armed Forces Tribunal Act, 2007. The applicant has made the following prayers:-

- (a) *Quash and set aside the impugned letter No 13102/IC-49315N/Sigs/MP 6(C) dated 24.07.2017. and/or*
- (b) *Direct respondents to grant benefit of War Injury Element and Disability element by making calculation as per Govt of India, MoD letter No 16(02)/2015-D(Pen/Pol) dated 08.08.2016 and benefit of broad banding from 30% to 50% with effect from date of retirement of the applicant, in terms of Govt. of India, Min of Defence letter No 1(2)/97/D(Pen-C) 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 judgment dated 10.12.2014. And/or*
- (c) *Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a. with effect from the date of retirement with all the consequential benefits. And/or*
- (d) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.*

2. The applicant Lt. Col Shriman Narayan (Retd) was commissioned in the Indian Army on 16.12.1989 and retired from

service on 31.03.2014 on reaching the age of superannuation. At the time of retirement from service, the officer was brought before a duly constituted Release Medical Board which viewed his disabilities as ID (i) "SPLINTER INJURY RIGHT SHOULDER" 6-10% ID (ii) " PIVD L4-5, L5-S1 (OPTD) " 20%. The Release Medical Board (RMB) assessed the disabilities of the applicant as ID (i) 'attributable to military service', ID (ii) 'aggravated by military service' with composite degree of disablement @30% for life. The competent Authority accorded grant of disability element of disability pension @30%. The applicant is thus in receipt of the disability element of disability pension @ 30% for life w.e.f. 01.04.2014 vide PPO No.M/Corr/8008/2015 dated 09.10.2014. An application dated 22.08.2014 was submitted by the applicant for review of percentage of disability, which was sanctioned and a Re- survey Medical Board was constituted on 16.12.2015, which assessed the disabilities of the applicant as (i) "SPLINTER INJURY RIGHT SHOULDER" 6-10% ID (ii) "PIVD L4-5, L5-S1 (OPTD)" 20% with composite degree of disablement @30% for life. A representation to the Appellate Committee on First Appeal (ACFA) was made by the applicant on 11.04.2017 for broad banding of disability element was made, which was rejected vide the impugned letter dated 24.07.2017.

3. On behalf of the applicant, it has been submitted that the applicant was sanctioned War Injury element/disability element of pension vide ADG PS-4, IHQ of MoD letter No. 13102/IC-49315N/Sigs/MP-6(c)/179/2014/AG/PS-4(Imp-II) dated 04.08.2014, he was granted disability element of pension @ 30% for life considering his both disabilities as attributable to /aggravated by military service vide PCDA (P) Allahabad PPO No M/Corr/8002/2014 dated 09.10.2014.

4. It is the case of the applicant that the applicant is entitled to rounding off of his disability element of pension from 30% to 50% in terms of Govt. of India, Min of Defence letter No. 1(2)/97/D (Pen-C) dated 31.01.2001 and law settled in the light of the judgment of the Hon'ble Supreme Court delivered in Civil Appeal No. 418/2012 in UOI & Ors Vs. Ram Avtar. Reliance was further placed on behalf of the applicant also on Govt of India, MoD letter No. 16(02)/2015-D(Pen/Pol) dated 08.08.2016 which provides the method of calculation of disability where two types of IDs are involved wherein it is provided to the effect:-

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*No. 16(02)/2015-D(Pen/Pol)
Government of India
Ministry of Defence
Department of Ex-Servicemen Welfare*

New Delhi, Dated 8 August 2018

To
The Chief of the Army Staff
The Chief of the Naval Staff,
The Chief of the Air Staff

Subject: Method of Calculation of disability where two types of IDs are involved.

Sir,

It has been observed during perusal of RMB/ IMB proceedings that some Armed Forces Personnel have sustained some disability under category B&C as Ministry of Defence letter No. 1/2/97/D(Pen C) dated 31 January, 2001 and composite assessment is made for all the disabilities by the Medical Board.

2. The composite assessment of disabilities may be equal to or less than the mathematical sum of percentage of disabilities. Since the calculation method of normal disability and war injury is different and assessment of disabilities including both the normal disability and war injury are assessed as composite, therefore in absence of clear directions: guidelines calculation of pension value for disabilities including both types of disabilities is not possible it is also mentioned that rounding off benefit is presently given only in Invalidment cases attributable to or aggravated by military service and not in discharge cases.

3. Now the issue has been analyzed in totality and the undersigned is directed to state that the methodology of calculation of pension values in cases where War Injury Element and Disability Element both exist may be carried out as follows. Firstly, the composite assessment for all accepted disabilities shall be derived. The higher element, i.e., War Injury Element (WIE) shall be deducted from the composite assessment and paid in full, irrespective of the percentage of assessment. The remainder shall be calculated as the normal Disability Element (DE) The minimum assessment criterion shall not be applicable in such cases as the net assessment reckonable for WIE and DE together is more than 20%.

(a) Discharge Cases- Cases where Armed Forces Personnel are discharged from service on completion of prescribed terms of engagement the higher element, i.e., the War Injury Element (WIE) Shall be deducted from the composite assessment and paid in full, irrespective of the percentage of assessment. The remainder shall be calculated as normal Disability Element (DE).

(b) Invalidment Cases -Cases where Armed Forces Personnel are invalided out on medical ground which is attributable to or aggravated by military service, the composite assessment and war injury element will be rounded off in terms of Para 72 of GOL MOD letter No 1 (2)97/D(Pen-C) dated 3:01 2001

Further, rounded percentage of War Injury Element (WIE) shall be deducted from the rounded percentage of composite assessment. The remainder shall be calculated as normal Disability Element (DE).

4. *The provisions of this letter shall take effect from the date of issue.*

5. *This issues with the concurrence of the Finance Division of this Ministry vide their ID No. 10(07)/2016/Fin/Pen dated 01.07.2016.*

6. *Hindi version will follow."*

to submit thus that the applicant was granted only a disability element of pension for both the disabilities depriving him of the benefit of war injury which he suffered during operation.

5. On behalf of the respondents, reliance was placed on Regulation 81 of Pension Regulations for the Army, 1961, Part I to submit to the effect that it stipulates that unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is either attributable to or aggravated by military service and the disability is assessed at 20% or more, to submit to the effect that the low medical category officer who retired on superannuation or on completion of tenure can be granted disability pension under the provisions of Regulation 37 of Pension Regulations for the Army, 1961 if he fulfills the twin eligibility conditions as stated except that the percentage of disability should be 20% or more.

6. The respondents further submit that to remove subjectivity in granting the overall disability percentage, the concept of broad-banding was put in place vide GoI letter dated 31.01. 2001(Para 7.2) based on the recommendation of 5th CPC. The respondents further submit to the effect that where two types of disabilities, i.e., War Injury and normal disability were involved, the Tribunal in the past has ordered rounding off composite disability and leaving to the executive authority to divide this enhanced composite assessment between war injury and normal disability and generally, the higher element was kept as it is and balance was given as normal disability and that there was no clear policy for calculating war injury/ normal disability percentage in the composite assessment given by the RMB. The respondents have further submitted to the effect that the norms had been laid down vide MoD letter No. 16(02)/2015-D(Pen/Pol) dated 08.08.2016. The respondents thus seek that the separate rounding off of the War Injury element and disability element be not be accepted as the policy issued vide letter No. 16(02)/2015-D(Pen/Pol) dated 08.08.2016 is clear and beneficial to all.

ANALYSIS

7. On the consideration of the submissions that have been made on behalf of either side, it is essential to observe that laid down by the Hon'ble Supreme Court in *Ex. Sapper Mohinder Singh vs. UOI* in

Civil Appeal No. 164/1993 and UOI Vs. Damodaran AV, SLP(C) No. 23727/2008 and Ex CFN Narsingh Yadav Vs. UOI & Ors. in Civil Appeal no. 7672/2019, the opinion given by the medical authorities is entitled to be given due weight and credence and the opinion given by the medical board cannot be set aside by the administrative or financial authority without a further examination of the Armed Forces Personnel by a higher medical authority, nor without giving reasons to set aside the previous medical opinion.

8. The disability of Splinter Injury Right Shoulder, the said disability of the applicant as per the records that has been put forth as per the RMB placed on record clearly stipulates it being a Battle casualty (J&K) dated 03.09.2001. As regards the disability of PIVD L4-5, L5-S1 (OPTD) in the instant case that the applicant suffers from has to be held to be aggravated due to military service and the applicant is entitled to the grant of disability element of pension assessed @20% for life in relation thereto.

9. Likewise, the recommendation put forth for the grant of disability pension qua the applicant in relation to the said disability was put forth as under:-

“2. The offr is entitled to grant of war injury pension @6-10% for life and DP @20% for life with composite 30% for life.”

10. As has been observed by us herein above, the applicant is already in receipt of the disability element in relation to the disability

of PIVD L4-5, L5-S1 (OPTD) along with war injury for SPLINTER INJURY RIGHT SHOULDER, compositely @30% for life.

11. It is pertinent to mention that, in terms of Para 3 (a) of MoD letter No. 16(02)/2015-D(Pen-Pol) dated 08.08.2016, that in discharge cases, the personnel discharged from service on completion of prescribed terms of engagement, the higher element, i.e., the War Injury Element (WIE) shall be deducted from the composite assessment and will be paid in full, irrespective of the percentage of composite assessment and the remainder shall be calculated as normal disability element. Though, vide Para-4 of this letter dated 08.08.2016 it is provided to the effect:-

"4. The provisions of this letter shall take effect from the date of issue."

which indicates that the said letter takes effect from 08.08.2016. The tribunal however, in the case of Brig Ajay Kumar(Retd) Vs. Union of India OA No. 567 of 2016, was unable to accept the disparity between those who sustained the war injury prior to the date 08.08.2016 and after 08.08.2016 for the grant of the broad banding of the war injury element of pension and thus the cutoff date of 08.08.2016 in the Govt. of India, MoD letter No. 16(02) / 2015 - D(Pen / Pol) was declared invalid and unconstitutional and the benefits that accrue pursuant to the policy letter dated 08.08.2016 have to be held to be applicable to all

pursuance of the Armed Forces who have suffered from war injuries even if prior to 08.08.2016. In the instant case the applicant suffered from 2 disabilities viz. (i) PIVD L4-5, L5-S1 (OPTD) @ 20%, for which applicant was in receipt of the disability pension, and (ii) SPLINTER INJURY RIGHT SHOULDER @6-10% which was declared as battle casualty for which Part II order was issued on 10.05.2000. The composite assessment after calculation of these two disabilities works out to be 30% as per the formulae laid down vide MoD letter No. 16036/ RMB/ IMB/ DGAFMS/ MA (Pens) dated 14.12.2009. Accordingly, as per the illustration mentioned in case-2 (Discharge Case) vide MoD letter No. 16(02)/2015-D(Pen-Pol) dated 08.08.2016, the War Injury Element assessed @6-10% for life will be deducted, and paid in full, from the composite assessment of disabilities assessed @30%. The normal disability will be 20% which will be rounded off to 50% for life in terms of the verdict of the Hon'ble Supreme Court in UOI & Ors. Vs. Ram Avtar in Civil Appeal No. 418/2012 and Para 7.2 of MoD letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 and in so far as War Injury Element is concerned, which was assessed @6-10% for life will be paid in full.

CONCLUSION

12. The OA 567/2016 is allowed. The applicant is thus held entitled to the grant of the war injury element of pension for the

disability of Splinter Injury Right Shoulder @6-10% for life as well as the grant of the disability element of pension assessed @20% rounded off to 50% for life for the disabilities of PIVD (which he is already in receipt thereof).

13. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents.

14. No order as to costs.

Pronounced in the open Court on the 31 day of May, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

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