

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

B.

OA 1898/2017

Ex Hav Madan Mohan Sau Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Trilok Chand, Proxy Counsel for
Mr. U.S. Maurya, Advocate
For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

CORAM

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

ORDER
27.03.2024

Vide our detailed order of even date, we have allowed the OA 1898/2017. 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)

(REAR ADMIRAL ~~DHIREN~~ VIG)
MEMBER (A)

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ORDER

The applicant "No. 15370797-M Ex Hav Madan Mohan Sau" vide the present OA makes the following prayers:-

"(a) Direct respondents to grant disability element of disability pension from 20% to 50% (after broad banding) for life wef 01.08.2009 (from date of discharge) in terms of para 7.2 of Govt. of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 as applicant case squarely covered by Hon'ble AFT (RB) Chandimandir O.A No. 1145 of 2011 titled Jagrup Singh Vs. UOI & Others order dated 11.08.2011 and a list of 13 more cases are also annexed in Annexure A-11 of this OA.

(b) Direct respondents to pay the due arrears of disability element of disability pension with interest @12% p.a. from the date of discharge with all the consequential benefits.

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

2. The applicant was enrolled in the Army (Corps of Signals) on 27.10.1989 and was discharged from service on 31.07.2009 (A/N) under Army Rule 13 (3) Item III (iv) at his own request on compassionate grounds in low medical

category S₁H₁A₁P₂ (Permanent) E₁ for the disability "**LOW BACK ACHE (M- 54.5)**". He had rendered 19 years and 278 days of service, for which he is in receipt of service pension vide PCDA (Pensions) Allahabad PPO No S/032263/2010 (ARMY) dated 30.07.2010.

3. Since the applicant was in Low Medical Category S₁H₁A₁P₂ (Permanent) E₁ for the disability "**LOW BACK ACHE (M- 54.5)**", at the time of his retirement, he was brought before the duly Constituted Release Medical Board (RMB) held on 20 July 2009 at Military Hospital Jalandhar, wherein he was physically and medically examined and his disability was opined as *"aggravated and connected with military service"* due to physical exertion associated with training, prolonged standing, marching etc in service". The medical board has assessed the percentage of disablement @ 20% for life long with composite assessment for all disabilities @20% for life long vide AFMSF-16 dated 20 July 2009.

4. The PCDA (Pensions), Allahabad, the statutory body of pension sanctioning authority accepted the disability pension claim of petitioner and notified disability element @ 20% for life with effect from 1 August 2009 vide PPO No DE/0352/2011 dated 05 May 2011.

5. The applicant submits vide letter dated 08.11.2016 and 14.06.2017 and in terms of the verdict of the Hon'ble Supreme Court titled as *UOI vs Ram Avtar* decided on 10.12.2014 in Civil Appeal no. 418 of 2012, the applicant sought

that the disability element of pension granted to the applicant at 20% for life be broad banded to 50% for life and the revised PPO be issued accordingly in terms of the Govt of India, Ministry of Defence vide letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 with specific reference to the contents of Para 7.2 thereof which reads to the effect:-

"7.2 Where an Armed Forced personnel is invalided out under circumstances mentioned in Para 4.1 above, the extent of disability or functional incapacity shall be determined in the following manner for the purposes of computing the disability element:

<i>Percentage of disability as assessed by invaliding medical board</i>	<i>Percentage to be reckoned for computing of disability element</i>
<i>Less than 50</i>	<i>50</i>
<i>Between 50 and 75</i>	<i>75</i>
<i>Between 76 and 100</i>	<i>100</i>

to contend that the applicant is entitled to the rounding off of the disability element of pension.

6. The respondents however vide the impugned letter dated 16.11.2016 stated to the effect:-

"2. You were enrolled in the Army on 27 Oct 1987 and discharged from service on 01 Aug 2009 under Army Rule 13 (3) item III (iv) at your own request on compassionate grounds after rendering 19 years, 09 months and 05 days of military service.

3. Rounding off benefit of disability element is applicable to those personnel who have been invalided out from service or discharged before completion of terms of engagement/service limit on medical grounds. Since, you have been discharged from service at your own request. You are not eligible for rounding off benefit of disability element as per existing policy."

to submit that in as much as the applicant had been discharged from service at his own request he was not entitled to the rounding off of the benefit of the disability element of pension which was applicable to only those personnel who have been invalided out from service before terms of engagement / service related on medical grounds.

7. The applicant also places reliance on the order of the Hon'ble High Court of Delhi in the case of ***Mahavir Singh vs Union of India & Anr*** on 05.05.2004 against which the SLP (C) 24171/2004 was dismissed vide order dated 04.01.2008. The applicant also places reliance on the order dated 23.07.2015 of the AFT (RB) Chandigarh in OA 1220/2014 titled as ***Gurmail Singh vs Union of India & Ors*** wherein it was observed to the effect that the MoD letter No. 16(5)2008/D(Pen/Policy) dated 29.09.2009 to contend to the effect that the issue for grant of disability pension/disability element to the eligible members of the Armed Forces who have retired voluntarily before completion of his term of engagement was made permissible.

8. Reliance was also placed on behalf of the applicant on the order dated 12.08.2010 in TA 523/2010 in the case of ***Group Captain Kaushik vs UOI & Ors.*** whereby the pre 01.01.2006 retirees became eligible for consideration for grant of disability pension wef 01.01.2006. The applicant also places reliance on the order 11.08.2011 in OA 1145/2011 of the AFT RB (Chandigarh) in the case of ***Jagrup Singh vs UOI & Ors.*** in which case, the applicant thereof who was

discharged after 01.01.1996 was held entitled to the benefit of broad banding of the disability element of pension in view of the order dated 04.08.2010 in OA 329/2010 titled as *Lt Gen Vijay Oberoi and Ors vs UOI & Ors.* in which case the applicant sought voluntary retirement. The applicant has also laid stress on the aspect that the respondents in the case of *Jagrup Singh* (supra) made the payment with the benefits of the broad banding with interest @ 10% p.a. from the date the amount became due till actual payment and prayed likewise that the applicant herein be granted the arrears of the disability element of disability pension with interest @ 12% p.a. from the date of discharge with all consequential benefits as prayed through the OA.

9. On behalf of the respondents, the submissions that have been made through the Counter Affidavit dated 27.03.2018 were to the effect that the verdict of the Hon'ble Supreme Court in *UOI vs Ram Avtar* (supra) holds that the rounding of benefits of the disability element is applicable to those personnel who retired on attaining the age of superannuation or on completion of their tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service to submit that in the instant case, the applicant was discharged from service at his own request on compassionate grounds and was not discharged from service on completion of his tenure or on invalidment out from service.

ANALYSIS

10. On a consideration of the submissions made on behalf of either side, it is essential to observe that the matter is no more *res integra*.

11. In view of the verdict of the High Court of Delhi in ***Mahavir Singh Narwal vs UOI & Anr*** 2004 (74) DRJ 661 (DB) CW No. 2967/1989, in which case the petitioner thereof had retired on his own request and had been suffering from some disability for which it had been sought to be contended by the Union of India *inter alia* that he had attained discharge on compassionate grounds qua which it was observed vide para 7 thereof to the effect:-

"7. The arguments advanced by the learned counsel for the respondents that these letters were not issued by the competent authority is not of any relevance for grant of disability pension. What is relevant is whether the mandate of Pension Regulation 173 read with Rules 1 and 2 of Appendix II has been taken into consideration or not. Merely because a person has attained discharge on compassionate ground although his disability has been acquired on account of stress and strain of military service will not be a ground to reject the claim of disability pension, it has been invalidated act in terms of Appendix II of Rule 173. We allow the writ petition and direct the respondent to grant disability pension to the petitioner on the basis of assessment of 30% disability as opined by the Release Medical Board in the year 1979 upto date. For future disability pension the respondent may conduct another medical board to assess the percentage of disability of the petitioner. Arrears of disability pension be paid to the petitioner within a period of 8 weeks. If the same are not paid within 8 weeks the petitioner shall be entitled to the interest at the rate of 9% on the amount of arrears. With these directions the writ petition is allowed",

thus thereby observing that merely because a person has attained discharge on compassionate ground although his disability has been acquired on account of stress and strain of military service, the same would not be a ground to reject the

claim of disability pension and the person would thus be held to be invalided out in terms of Appendix II of Rule 173 of Pension Regulation for the Army.

12. The order dated 01.08.2017 of this Tribunal in OA 1131/2017 in the case of *Ex Sgt Ujjal Kumar Dey vs UOI & Ors.* is precisely in relation to the same issue and in as much as the applicant thereof had sought broad banding of the disability element of pension from 20% to 50% on the strength of judgment of the Hon'ble Supreme Court in *UOI & Ors. vs Ram Avtar* (supra) decided on 10.12.2014 and objections to which were raised by the respondents submitting plea that the applicant was not entitled to the said relief to the grant of broad banding as he was discharged from service on his own request, which objections were however held to have no force in view of the verdict of the Hon'ble Supreme Court in *UOI & Ors. vs Ram Avtar* (supra) as already observed hereinabove.

13. Significantly, as held vide order dated 30.07.2018 in OA 997/2018 in the case of *Ex WO Ram Avtar vs UOI & Ors.*, the applicant was granted benefit of rounding off of disability element of pension from 20% to 50% for life, as observed vide Para 3 thereof to the effect:-

"3. Since the PPO placed on record by the applicant, was not very clear, therefore, the respondents were directed to verify whether the applicant is getting disability pension @ 20% till date. This fact has been verified by learned counsel for the respondents. Counsel further submits that subject to verification, he has no objection to grant of broadbanding of disability pension from 20% to 50% to the applicant. However, It is submitted that the judgement dated 01.12.2017 passed by the Larger Bench of this

Tribunal in OA 1439/2016 Ex Sgt Girish Kumar Vs UOI & Ors has been challenged by Union of India by filing civil appeal Diary No.(s) 21811/2018 and operation of the impugned judgment and order passed by Larger Bench has been stayed. However, as per the submissions made by Learned Additional Solicitor General, Union of India that Union of India will be advised to release disability pension for a period of three years prior to filing of the OA or the date of retirement, appropriate orders in accordance with the submissions may be passed. "

14. Vide order dated 04.08.2010 in OA 329/2010 in the case of *Lt Gen Vijay Oberoi vs UOI & Ors.* and other connected TAs it had been categorically observed to the effect:-

"In the result, the petitions are allowed, the words, "provisions contained in Para 7.2 above shall not be applicable for computing disability element. Disability

actually assessed by the duly approved Release Medical Board/Invaliding Medical Board, as accepted by the Pension Sanctioning Authority, shall reckon for computing disability element" appearing in Para 8.2 of the letter dated 31.01.2001 are struck down. Consequently, it is held that the persons including the petitioners, being discharged on attaining the age of superannuation, or on completion of tenure, or being retired etc. if found to be suffering from disability to the extent of 20% or above, and being attributable to or aggravated by military service, would be entitled to the benefit of rounding off/broad banding, at par with the persons, who are prematurely invalidated out."

the challenge to the same was dismissed by the Hon'ble Supreme Court in the connected appeals in *Ram Avtar's* case, even though vide order dated 13.07.2018 in the case of *UOI Through its Secretary vs. Sgt Girish Kumar and Ors* in Civil Appeal Dy no. 21811/2018 of the Hon'ble Supreme Court there has been a stay of the operation of the order dated 01.12.2017 of the Larger Bench of this Tribunal.

15. Significantly, vide order dated 28.11.2019 by the Hon'ble Supreme Court in Civil Appeal 5970/2019 in the case of **Commander Rakesh Pande vs UOI & Ors**, in that case the applicant thereof had taken premature retirement from Indian Navy after completion of 20 years of service on 30.04.2001 and had been downgraded to SHAPE 3 (S3A2) on 29.02.2000 and had been assessed degree of disablement @ 20% for NIDDM and 6-10% for Hyperlipidaemia which was directed to be broad banded to 50% for life in view of the verdict of the Hon'ble Supreme Court in **Ram Avtar** (supra).

CONCLUSION

16. In the circumstances, the **OA 1898/2017** is allowed and the applicant is entitled to the grant of the disability element of pension qua the disability of the applicant i.e. "**LOW BACK ACHE M54.5**" assessed at 20% for life which is directed to be broad banded to 50% for life in terms of the verdict of the Hon'ble Supreme Court in **Union of India vs Ram Avtar** decided on 10.12.2014 in Civil Appeal no. 418 of 2012 with effect from the date of his discharge. However, in terms of Hon'ble Supreme Court judgement in **UoI vs Tarsem Singh** [2009 (1) AISLJ 371] arrears will be restricted to three years from the date of filing of OA.

17. The respondents are directed to issue the corrigendum PPO with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents

would be liable to pay interest @ 8% p.a. on the arrears due from the date of this order.

18. No order as to costs.

Pronounced in the Open Court on the 27th day of March, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/