

**COURT NO.1, ARMED FORCES TRIBUNAL**

**PRINCIPAL BENCH, NEW DELHI**

**OA 659/2015**

**Capt (Retd) Ram Saran Singh**

**... Applicant**

**VERSUS**

**Union of India and Ors.**

**... Respondent**

**For Applicant:**

Mr. S.M. Dalal, Advocate

**For Respondent:**

Mr. K.K. Tyagi, Advocate

**CORAM**

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

**ORDER**

The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant who is a retired Capt of the Indian Army, who is aggrieved on not being granted war injury pension and broad banding. He has made the following prayers: -

(a) Set-aside the impugned order dated 23.07.2015 being arbitrary and illegal;

(b) Direct the respondents to release 60% war injury pension to the applicant w.e.f. the date of his discharge i.e. 01.04.1969 along with 12% interest on the arrears;

(c) Direct the respondents to release 75% war injury pension to the applicant w.e.f. 01.01.1996 along with 12% interest upon the arrears;

(d) Direct the respondents to release Rs. 1 lac as ex-gratia amount as per Government of India, Ministry of Defence letter dated 21.03.2000;

(e) Award cost of the Original Application in favour of the applicant;

(f) Pass any other relief(s) which this Hon'ble Tribunal may deem appropriate, just and proper in the interest of justice and in the facts and circumstances of the case;

### **Brief Facts of the Case**

2. The applicant was commissioned in the Indian Army on 03.05.1964 and retired from service on 01.04.1969 (AN). At the time of retirement, the officer was brought before the duly constituted Release Medical Board (RMB) which held his ID "FROST BITE BOTH FEET" with percentage of disability @ 30% for ten years and attributable to military service which was further extended for life. Hence, the applicant was in receipt of disability pension @ 30% w.e.f 01.04.1969 (date of retirement).

3. Subsequently, the ret'd officer filed an appeal dated 03.06.2015 for the benefit of rounding off disability pension as per GoI, MoD letter dated 31.01.2001. The same was rejected vide letter dated 23.07.2015 which stated that the benefit of broad banding for computation of disability/ war injury element was admissible only to those officers who have been invalidated out of service. Aggrieved, the applicant preferred the instant application for war injury pension with broadbanding benefits.

### **Arguments by Counsel of the Applicant**

4. The counsel for the applicant took us through the details of the case and stated that there was no dispute regarding the issue that the injuries

sustained by the applicant in 1966 was held attributable to military service by the RMB. In reference to the claim of treating the disabilities as 'Battle Casualty,' the counsel submitted that the MoD, vide letter dated 30.10.1987, mentioned that the war injury pension in the case of officers will be a minimum of 60%. Therefore, the applicant, being a battle casualty, was entitled to a war injury pension of 60% with effect from the date of his release from service.

5. The counsel mentioned that the applicant was brought before a RMB which assessed the disability of the applicant as attributable to Military service @ 30% w.e.f. 01.04.1969 to 05.01.1979. This was subsequently accepted by GoI, MoD vide its letter dated 17.10.1975.

6. The counsel stated that the applicant submitted an appeal seeking broad banding of his disability pension vide letter dated 03.06.2015, wherein the applicant mentioned that he had been granted disability pension at 30% for life as mentioned in CDA letter dated 14.03.1988, and that it had been arbitrarily rejected vide letter dated 23.07.2015. He further stated that the applicant, being a battle casualty, was entitled to a grant of Rs. One lakh ex-gratia as per the GoI, MoD letter dated 21.03.2000. The

counsel then elaborated that MoD, vide its letter dated 15.09.2014, has granted the provision of broad banding to all ranks w.e.f 01.01.1996. He further added that as per the Rule 4 of the Entitlement Rules, an individual proceeding on discharge, release, or retirement in a low medical category BEE(Perm.) was to be deemed as being invalided out.

### **Arguments by Counsel for the Respondents**

7. The counsel for the respondents took us through the details of the case and submitted that the applicant was not entitled for rounding off/enhanced rate of disability pension in terms of GoI, MoD letter dated 31.01.2001 since he was a 'retiree' and not a case of invalidation.

8. He further mentioned the judgment of **UOI Vs. Ram Avtar & Ors** (CA No. 418/2012) wherein the benefits of broad banding were given based on the existing policy and instructions from competent authority on the subject and in this case the petitioner was not entitled for broad banding.

9. The counsel stated that the applicant submitted an appeal on 03.06.2015, seeking the rounding off of disability pension in accordance with the GoI, MoD letter dated 31.01.2001, but the said appeal was denied

vide letter dated 23.07.2015, stating the reason that entitlement to the broad banding benefit for calculating the disability/war injury component is applicable solely to officers who have been discharged from service due to invalidation.

### **Consideration of the Case**

10. From the documents submitted by party it is ascertained that he was brought before the duly constituted Release Medical Board (RMB) which held his ID "FROST BITE BOTH FEET" with percentage of disability @ 30% for ten years and attributable to military service vide letter dated 17.10.1975, but later he was given disability pension for the ID @30% for life vide letter dated 14.03.1988 and the relevant letters indicating the same have been extracted below:-

#### **Letter dated 17.10.1975**

*No.70/199509/69/Pen-C  
Government of India  
Ministry of Defence*

*New Delhi, the 17th October 1975*

*To*

*The Chief of the Army Staff,  
New Delhi.*

*Subject: Claim to disability pension in respect of Capt. R.S. Singh (BC-57259)  
(Retd)*

*I am directed to say that the President has decided that the disability via: "Frost Bite both feet – effect of" from which the above named officer was found suffering at the time of release from service should be regarded as attributable to his military service and the degree of disablement assessed at 30% permanent for the period from the 1.4.69 (the date of release from service) to 5.1.79 (via for 10 years from the date on which the Release Medical Board was held),*

*2. The awards will be regulated in terms of this Ministry's Letter No. 212413/74/Pan-C dated 7.7.75.*

*3 Cut letter of even number dated 3.10.69 is hereby cancelled.*

*4. This issues with the concurrence of the Ministry of Finance (Defence, vide their uo. No. 9956-Pen of 1975.*

*Yours faithfully,*

*(V.Y. Farayan)*

*Under Secretary to the Govt. of India*

**Letter dated 14.03.1988**

*To*

*No.G1/37336  
Office of CDA (Pens)  
Allahabad dt: 14.03.1988*

*To  
Ex Capt R S. Singh (Retd)  
Joint Director (Urban Land Ceiling)  
Nagar Mahapalika, Agra (U.P.)*

*Sub: Rationalisation of pension structure for pre 1.1.86 pensioners implementation of Govt. decision on the recommendation of the 4<sup>th</sup> Central Pay Commission.*

...

*In accordance with the provisions of the Govt. of India, Min of Defence, letter No.1(4)/87/D (Pens/Sers) Dtd 27.7.87, Your retiring pension has been revised to SE (Rs.490/- wef 1.1.86 for life.*

*DE Rs.225/- w.e.f. 1.1.86 to for life for 30% disablement vide PPO No.MFPC/962/88 sent to T.O. Muzzafar Nagar.*

*The above award including the benefit of additional relief admissible in terms of Govt. of India, Min. of Defence letter No.1(4)/87, (Pens/Sers) dt.12.5.87, and thereafter will be your revised consolidated pension (RCP) w.e.f. 1.1.86.*

*Since you had commuted Rs..... Out of your pension, the net residual RCP payable w.e.f. 1.1.86 will Rs..... However, on completion of 15 yrs from the date of retirement of the commuted portion is to be restored in terms of Govt. of India, Min.of personnel PCR POM No.34/2/86, PA&PJ dt.5.3.87. Thus wef 30.3.87. Your net payable RCP will be*

*In addition you are entitled to dearness relief on the total amount of (SF+DE) @ 4% w.e.f. 1.7.86 to 31.12.86, @ 8% w.e.f. 1.1.87 to 30.6.87 @ 13% w.e.f. 1.7.89 onwards) on revised consolidated retiring pension. However, dearness relief will be payable to you after release for re-employment.*

*The pension disbursing officer may be contacted after about 15 days of receipt of this memo for the payment of arrears/Transmission of Corr. PPO to your bankers.*

*Accounts officer (Pens)*

*14.3.88*

11. The facts germane to the case that are undisputed are that:

(a) The applicant was commissioned in the Indian Army on 03.05.1964.

(b) At the relevant time of sustaining the injury the applicant was posted with 7 Kumaon, which was located near Mana Pass on the Indo-China border. He was detailed on a long-range patrolling party

in Dec 1966 in a snow bound area wherein during a petrol he got frostbite on both his feet.

(c) At the time of retirement, the officer was brought before the duly constituted RMB which viewed his ID as "FROST BITE BOTH FEET" with percentage of disability @ 30% for ten years vide MoD letter dated 17.10.1975 which was held attributable to military service. He was granted disability pension @ 30% w.e.f 01.04.1969 and this benefit was later extended for life which is mentioned vide MoD letter dated 14.03.1988.

(d) The retd officer filed an appeal dated 03.06.2015 for the benefit of rounding off disability pension as per the GoI, MoD letter dated 31.01.2001. The same was rejected vide letter dated 23.07.2015 which stated that the benefit of broad banding for computation of disability/ war injury element is admissible only to those officers who have been invalidated out of service.

12. Having heard both parties at length, the issues that are required to be decided are,

(a) Whether the applicant is entitled to be declared as a Battle Casualty with complete benefits.

(b) Whether he is entitled to broadbanding of disability pension from 30% to 50%.

### **Battle Casualty**

13. Before proceeding further we may reproduce Paragraph 4.1 of GoI, MoD letter dated 31.01.2001 which reads as under: -

#### ***PART II- PENSIONARY BENEFITS ON DEATH/ DISABILITY IN ATTRIBUTABLE/AGGRAVATED CASES***

*4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/ aggravated causes, the cases will be broadly categorized as follows: -*

##### **Category A**

*Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.*

##### **Category B**

*Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Disease contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.*

##### **Category C**

*Death or disability due to accidents in the performance of duties such as: -*

- (i) Accidents while traveling on duty in Government Vehicles or public/private transport;*
- (ii) Accidents during air journeys;*
- (iii) Mishaps at sea while on duty"*
- (iv) Electrocution while on duty, etc.*
- (v) Accidents during participation in organized sports events/ adventure activities/ expeditions/ training.*

Category D

*Death or disability due to acts of violence/attack by terrorists, anti-social elements, etc. whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc. would be covered under this category, besides death/disability occurring while employed in the aid of civil power in dealing with natural calamities.*

Category 'E':

*Death or disability arising as a result of:*

- (a) Enemy action in international war.*
- (b) Action during deployment with a peace keeping mission abroad.*
- (c) Border skirmishes*
- (d) During laying or clearance of mines including enemy mines as also minesweeping operations.*
- (e) On account of accidental explosions of mines while laying operationally oriented mine field or lifting or negotiating mine field laid by the enemy or own forces in operational areas near international borders or the line of control.*
- (f) War like situations, including cases which are attributable to/aggravated by:
  - (i) Extremists acts, exploding mines etc, while on way to an operational area.*
  - (ii) Battle inoculation training exercises or demonstration with live ammunitions.*
  - (iii) Kidnapping by extremists while on operational duty.**
- (g) An act of violence/attack by extremists, anti-social elements etc while on operational duty.*

*(h) Action against extremists, antisocial elements, etc. Detach/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.*

*(j) Operations specially notified by the Govt. from time to time. 4.2 Cases covered under category "A" would be dealt with in accordance with the provisions contained in the Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 3.2.98 and cases under category "B" to "E" will be dealt with under the provisions of this letter.*

*Notes: -*

*(i) The illustrations given in each category are not exhaustive. Cases not covered under these categories will be dealt with as per Entitlement Rules to casualty pensionary awards in vogue.*

*(ii) The question whether a death/disability is attributable to or aggravated by military service will be determined as per provisions of the Pension Regulations for the Armed Forces and the Entitlement Rules in vogue as amended from time to time*

*(iii) In case of death while in service which is not accepted as attributable to or aggravated by Military Service or death after retirement/ discharge/invalidment, Ordinary Family Pension shall be admissible as specified in Min of Def letter No. 1 (6)/98/D(Pen/Ser) dated 03 Feb 98 as modified vide Ministry of Defense letter No.1(I)99/D(Pen/Ser) dated 07.07.99.*

*(iv) Where an Armed Forces personnel is invalidated out of service due to non-attributable/non-aggravated causes, Invalid pension/gratuity shall be paid in terms of Para 9 of Ministry of Defence letter No 1 (6)/98/D (Pen/Ser) dated 03 Feb 98 as amended/modified vide Ministry of defense letter No. 1 (I)/99/D(Pen/Ser) dated 07.06.99.*

14. After going through the records, we find that, it was undisputed that the disability of 'FROST BITE BOTH FEET' was a result of an injury sustained by the applicant in an operational area while he was detailed to lead a patrol party. The issue of war injury element of the applicant is squarely covered by the judgement of the Hon'ble Supreme Court in the

case of **Madan Prasad Sinha Alias Sanatan Baba Vs. Union of India and Ors.** ((2019) 15 SCC 232) held the following: -

*War injury pension is payable only in respect of participation in operations or in active line of duty – on facts held, as rightly found by the Tribunal, nature of disability suffered by appellant was not attributable to any such participation in action and hence he was not entitled to war injury pension.*

15. Similarly, AFT (RB), Lucknow in their order dated 05.07.2022 in , **Ashok Kumar Singh Vs. Union of India and Ors.** (OA 64/2022), while dismissing the OA, wherein, the petitioner had prayed for grant of war injury pension on the grounds that he had been injured in an operational area the court held that: -

*9. For grant of War Injury Pension, besides the accidental injuries being sustained in an operational area, injury should be sustained by an action. The dictionary defines action as: Expenditure of energy, deed, operation, gesture, battle lawsuit. In action would mean while engaged in battle. Mere presence in an operational area would not qualify as being in action. We understand that the entire state of Manipur and Nagaland and parts of adjoining states are notified under Operation Hifazzat, Parts of Sikkim, Assam, and J&K are similarly notified as operational areas. A full reading of the Government of India letter dated 31.01.2001 relating to War Injury Pension and classification of casualties for pensionary purposes shows that in all circumstances there is a direct and immediate relationship with the enemy or actions related to the enemy. In other words, there should be a direct and causal connection between the duties being performed and the cause of accident or death. This letter cannot be read in isolation and needs to be read in their full context.*

16. In light of the above considerations, the applicant is not entitled to a 'war injury pension' since the injury sustained was not in combat or any other direct action. Furthermore, considering that the injury occurred while the applicant was on patrol, and there are no relevant documents on record indicating that the applicant was involved in any operation or that the injury was a battle casualty incurred in action, the applicant is not entitled to an ex-gratia amount as per GoI , MoD letter dated 21.03.2000.

### **Broad Banding**

17. The aspects of broad banding are no longer res integra since the Apex Court in its judgement dated 10.12.2014 in the case of **Union of India and Ors. Vs. Ram Avtar** (CA No. 418/2012) and connected cases has held that Army personnel are entitled to the benefit of broad banding of disability war injury portion of pension irrespective of being invalided out, or discharged on their completion of term of engagement/or for any other reason. The Apex Court in its judgement dated 31.03.2011 in the case of **Capt K J S Buttar Vs. Union of India and Ors.** (CA No. 5591/2006) also held that the benefit of broad banding is to be extended

to all personnel irrespective of being invalided out of service or retired from low medical category on completion of service before or after 1996.

18. As regards rounding off of the disability element of pension, we have seen that the notification dated 31.1.2001 issued by the GoI which states that the disability below 50% shall be liable to be recommended as 50% for grant of the benefit of rounding off. The relevant paras of the notification reads thus:

*"7.2 Where an Armed Forces 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:*

<u>Percentage of disability as assessed by invaliding medical board</u>	<u>Percentage to be reckoned for computing of disability element</u>
<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>

19. Based on the documents submitted by the parties it is ascertained that the applicant was in receipt of Disability pension @30% for life w.e.f 01.04.1969. The concept of broad banding was introduced as part of the 5th CPC via letter dated 31.01.2001 (Para 7.2) and is applicable from

01.01.1996. Since the applicant was already granted disability pension w.e.f. 01.04.1969, the case of **Union of India and others Vs. Tarsem Singh** (2008) 8 SCC 648 will not be applicable. In our view, therefore, the applicant who was in receipt of the disability element of pension as on 01.01.1996 is eligible for the benefit of broadbanding from 30% to 50% from effect from 01.01.1996.

### **Conclusion**

20. In the light of the above considerations, the applicant is not entitled to 'war injury pension' since the injury sustained by him was not in combat or any other direct action. Further, he is entitled to the benefit of broadbanding for disability from 30% to 50% w.e.f 01.01.1996.

21. The OA is partially allowed and we direct the following:-

(a) Applicant who is in receipt of disability pension for life@ 30% is entitled to broadbanding to 50% w.e.f 01.01.1996.

(b) Respondents to issue necessary corrigendum PPO within three months.

(c) Respondents to calculate and pay the arrears as applicable w.e.f 01.01.1996. The amount of arrears shall be paid by the respondents within three months, 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.

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

Pronounced in open Court on this 2<sup>nd</sup> day of August, 2024.

**(JUSTICE RAJENDRA MENON)**  
**CHAIRPERSON**

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

/ashok/