

**COURT NO. 1**  
**ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**OA No. 464 of 2023**

**Colonel Vijay Kumar (Retd.)**

**...Applicant**

***Versus***

**Union of India & Others**

**.... Respondents**

**For Applicant:**

Mr. K.R. Verma and Mr. P.K. Narula,  
Advocates

**For Respondents:**

Mr. Anil Kumar Gautam, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**O R D E R**

1. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 are read as under:

***"(a) Quash and Set aside order dated 08.03.2021 to the extent that allowed the benefits of broad band of disability element of service pension to the Applicant @ 50% wef 01 Jan 2016 and not wef 01 Jan 2006.***

***(b) Direct the respondents to grant the benefits of broad banding of disability element of service pension to the Applicant @ 50% wef 01 Jan 2006 to 31 Dec 2015.***

*(c) Direct the respondents to pay interest @ 9% on the arrears of disability pension on account of broad banding wef 01.01.2006 to 31.12.2015.*

*(d) Pass any other order / direction that this Hon'ble Tribunal may deem fit and proper in that facts and circumstances of the case.*

### **BRIEF FACTS**

2. The applicant was Commissioned in the Indian Army on 22.08.1981 and was prematurely retired on 15.02.2005 in Low Medical Category (LMC) due to the diseases/disabilities; first, **'BILATERAL SENSORINEURAL HEARING LOSS'** assessed at @ 30% and recommended as attributable to military service, and second, **'SIMPLE OBESITY'** which was assessed Nil and recommended as Neither Attributable to Nor Aggravated (NANA) by the military service.

3. The applicant had earlier filed an OA bearing no. 506/2015 before this Tribunal which was allowed vide order dated 06.10.2015 and the applicant was granted the relief of disability pension at @ 30% rounded off to 50% (in terms of GoI-MoD letter dated 31.01.2001) along with the arrears of broad-banding restricted to three years, from the date of filing of the abovesaid OA, with interest @ 9% p.a.

## **CONTENTIONS OF THE PARTIES**

4. The learned counsel for the applicant submitted that the applicant was Commissioned in the Indian Army as Short Service Commission Officer on 21.08.1976 and had sought premature retirement (PMR) from service and was prematurely retired on 15.02.2005 in LMC after having served around 28 years 05 months and 25 days in military service.

5. The learned counsel for the applicant submitted that the applicant was already in receipt of service pension and was initially denied the disability element of service pension being a PMR retiree, however, he was made entitled to disability element of pension vide order dated 06.10.2015 in OA 506/2015 earlier filed by the applicant.

6. The learned counsel for the applicant submitted that a government sanction letter dated 24.06.2016 was issued in favor of the applicant by the PCDA (Pensions) Allahabad in compliance of the order dated 06.10.2015 in OA 506/2015.

7. The learned counsel for the applicant further submitted that the policy for broad-banding of disability element of pension was revised by the MoD on the basis of recommendations of 7<sup>th</sup> Central Pay Commission (CPC) and

the MoD vide its policy letter dated 05.09.2017 extended the benefit of broad-banding of disability element of pension to all the retirees after 01.01.2016, thereby curtailing the benefit of broad-banding to all pre-2016 retirees by allowing it w.e.f. 01.01.2016 and not w.e.f. 01.01.2006.

8. It is further submitted by the learned counsel for the applicant that the benefit of broad-banding of the disability element of pension from 30% to 50% has been curtailed by the respondents in the impugned order (Annexure A-1) while issuing the sanction for granting the arrears of disability pension, i.e., w.e.f. 01.01.2006 to 31.12.2015 @ 30%, thereby violating the order of this Tribunal dated 06.10.2015 in the OA 506/2015.

9. *Per Contra*, the learned counsel for the respondents submitted that in compliance of the order dated 06.10.2015 in OA 506/2015 of this Tribunal, a government sanction letter dated 24.06.2016 was issued and accordingly the PCDA had notified corrigendum PPO No. M/DIS/3205/2016 dated 26.08.2016.

10. The learned counsel for the respondents further submitted that the applicant had filed a Review Application

(RA) 71/2016 seeking modification of the order dated 06.10.2015 passed in the OA 506/2015 contending that arrears of the broad-banding of the disability element of pension not be restricted to prior to 03 years of the filing of the OA, however, the said contention of the applicant was declined and the RA 71/2016 was dismissed.

11. The learned counsel for the respondents further submitted that the applicant was conferred with the benefits in accordance with the revised policy letter dated 05.09.2017 (Annexure A-2) issued by the GoI-MoD and was accordingly granted disability element w.e.f. 01.01.2006 and broad-banding w.e.f. 01.01.2016 vide government sanction letter issued on 08.03.2021 (impugned order).

### **ANALYSIS**

12. We have heard the learned counsel for the parties at length and have gone through the records produced before us. It is not in dispute that the applicant had suffered with IDs; first, **'BILATERAL SENSORINEURAL HEARING LOSS'** assessed at @ 30% and recommended as attributable to military service, and second, **'SIMPLE OBESITY'** assessed Nil and recommended as Neither Attributable to Nor Aggravated

(NANA) by the military service and was allowed disability element of pension @ 30% to be rounded off to 50% w.e.f. date of his retirement and the arrears of the broad-banding were restricted prior to 03 years of the filing of the OA 506/2015 i.e., 15.07.2015. The operative part of the order dated 06.10.2015 in OA 506/2015 is reproduced below which states to the effect: -

***“5. The petitioner’s disability for the said disease has been assessed at 30% which is required to be rounded off to 50% in view of the Government of India’s letter dated 31.01.2001.***

***6. The petitioner will also be entitled to arrears of last three years from the date of filing of this OA which was filed on 15.07.2015 along with interest @ 9% per annum.”***

13. Even though the question involved in the present OA pertains to conferring the benefit of rounding off @ 30% to 50% of the disability element of pension w.e.f. 15.07.2012 (restricted prior to 03 years) which had already been decided by this Tribunal vide order dated 06.10.2015 in the OA 506/2015, however, the said benefit which was allowed, even after a lapse of 07 years at the time of filing of the present OA, had not been given to the applicant and accordingly the present OA is being taken up for consideration.

14. The applicant was prematurely discharged from the service on 15.02.2005, i.e., the applicant is a pre-2006 retiree. The entitlement to the disability pension was not admissible to pre-2006 retirees and this distinction was brought in effect vide *Department of Ex-Servicemen Welfare, GoI-MoD letter no. No. 16(5)/2008/D(Pen/Policy), dated 29.09.2009*. The said distinction of pre/post 2006 retirees qua entitlement to the disability element of pension was set aside after the decision of this tribunal in **OA 336/2011** titled ***Major (Retd.) Rajesh Kumar Bhardwaj v. UOI & Ors.***

15. After the decision of this Tribunal in OA 336/2011 (Supra), the Hon'ble Supreme Court vide its order dated 10.12.2014 in ***Union of India v. Ram Avtar***, Civil Appeal No. 418/2022, has held that irrespective of the nature of discharge, personnel getting disability pension would be entitled to the benefit of rounding off, and, hence the applicant is entitled to the benefit of broad-banding w.e.f. date of his discharge, i.e., 15.02.2005.

16. It is observed that despite the order dated 06.10.2015 in the OA 506/2015, the respondents have issued a government sanction letter dated 08.03.2021 (annexed as the

'Impugned Order' to the OA) which entitles the applicant to disability element of pension @ 30% w.e.f. 01.01.2006 to 31.12.2015 and the benefit of rounding off at @ 50% w.e.f. 01.01.2016 which is against the direction issued to the respondents vide order dated 06.10.2015 of this Tribunal.

17. Due to the inaction on part of the respondents in implementing the order dated 06.10.2015 in OA 506/2015, the applicant had to again invoke the jurisdiction of this Tribunal seeking the benefit of rounding off of the disability element of pension and now there is a delay of more than 09 years in the implementation of the order of this Tribunal.

18. In view of the above analysis, the present application stands disposed off with the following directions: -

- i. Order dated 08.03.2021 (annexed as the 'Impugned Order' to the OA) stands quashed and set aside.
- ii. Directions issued vide order dated 06.10.2015 are reiterated and the arrears of the broad-banding of the disability element of service pension are restricted to prior to 03 years of the date of filing of the OA 506/2015, i.e., 15.07.2015.



iii. Respondents are thus directed to issue the necessary corrigendum PPO granting the arrears of the broad-banding of disability element of service pension w.e.f. 15.07.2012 with 6% interest on delayed payment, after adjusting the amount already paid to the applicant, if any.

19. The OA thus stands disposed off. Consequently, Miscellaneous Application(s), if any, are also disposed.

Pronounced in the open Court on this 2<sup>nd</sup> day of July, 2025.

**[JUSTICE RAJENDRA MENON]**  
**CHAIRPERSON**

**[REAR ADMIRAL DHIREN VIG]**  
**MEMBER (A)**

/PRGx/