

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

OA No. 890 of 2017

Ex Sep Balbir Singh

..... Applicant

Versus

Union of India & Others

..... Respondents

For Applicant : Mr. Naresh Ghai, Advocate

For Respondents : Gp. Capt. Karan Singh Bhati
Sr. CGSC

CORAM:

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

ORDER

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:

"By holding that denial of service element of disability pension (vide PPO Annx A-1 by passing disability element for the disability aggravated by mil service) as bad, pay its service element (without 5% cut) and round off the disability element, incl fixed medical allowance for the delay in giving echs card, all with interest @ 12%."

BRIEF FACTS

2. The applicant was enrolled in the Indian Army on 01.06.1996 with terms of engagement of 07 years in colour and 08 years in reserve liability and was discharged from service on 31.05.2013 (A/N) under TA Rule 13 (3) item III Vol-I and TA Rule 14 (a) of TA Regulations 1948 on completion of terms and engagement for the rank of Sepoy after having served 11 years and 199 days of embodied service.

3. As per the RMB vide AFMSF-16, dated 15.05.2013, at the time of release, the applicant was found in Low Medical Category (LMC) for the disability **FACETAL LOW BACKACHE** which was assessed at @ 20% for life and recommended as aggravated by military service.

4. The applicant was granted disability element of the disability pension at @ 20% for life i.e., Rs. 767 per month vide PPO No. S/32299/2015 (ARMY) dated 29.07.2015 and was not granted the service element of pension.

5. The applicant served a legal notice dated 10.04.2017 seeking the service element of the disability pension to which there is no reply till the filing of this OA. _____

6. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1) of the AFT Act, we take up the present OA.

CONTENTIONS OF THE PARTIES

7. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army on 01.06.1996 and was discharged from service on 31.05.2013 in LMC due to the disability of **FACETAL LOW BACKACHE**.

8. The learned counsel for the applicant stated that the applicant is entitled to the service element of the disability pension in view of Regulation 183 (b) (ii) of the Pension Regulations for the Army (Part-1) 2008. Regulation 183 (b) (ii) of the PRA 2008 states to the effect: -

"183. ...

(1) Service element

(a)

(i)

(b) Where the individual

(i)

has not rendered sufficient service to qualify for a service pension"

(ii) In all other cases: Equal to the service pension as determined per Regulation 136 (a) or 146, but it shall in no case, be less than 2/3rd of the minimum

**service pension admissible
to the rank/pay Group.
It shall be further
subject to a minimum
of Rs.375/p.m.**

9. It is the contention of the learned counsel for the applicant that there is no requirement of minimum qualifying service and despite of shortfall where an individual has not rendered sufficient service, he would still be entitled for the grant of service element of the disability pension in view of Regulation 183 (b) (ii) of the PRA 2008 (supra).

10. *Per contra*, the learned counsel for the respondents submitted that the applicant had rendered 11 years and 199 days of embodied service against 15 years of qualifying service as per Annexure R-2 annexed in the Counter Affidavit filed on 05.09.2017.

11. The learned counsel for the respondents *inter alia* has placed reliance on Rules 47, 184 and 186 of Pension Regulations for the Army (Part-1) 2008 (in short 'PRA 2008') contending that the applicant is not entitled to the benefit of service pension as he had not rendered the minimum qualifying service period i.e., 15 years for Personnel Below

Officers Rank (PBORs). Rules 47, 184 and 186 of the PRA 2008

states to the effect: -

“Rule 47. MINIMUM QUALIFYING SERVICE FOR SERVICE PENSION: Unless otherwise provided for, the minimum qualifying service for earning a service pension is 15 years.

Rule. 184 (a) Subject to following provisions, the service qualifying for pension and reckonable emoluments in case of Territorial Army personnel shall be as specified in Section-2 of Chapter-I:

(i) Aggregate of qualifying embodied service whether continuous or broken shall count for service pension and gratuity. For calculating the total embodied service the break in embodied service due to disembodiment shall be treated as condoned but the period of breaks itself shall not be treated as qualifying service for pension. Where qualifying embodied service has been rendered in broken spells, 5 percent cut shall be imposed on the pension of the Personnel Below Officer Rank who have completed 15 years or more of aggregate embodied service, but have not completed 20 years of aggregate embodied service.

(ii) ...

(iii) ...

(iv) ...

Rule 186. MINIMUM QUALIFYING SERVICE FOR PENSION: All Territorial Army personnel (other than civil Government servants and civil pensioners), who have a minimum qualifying aggregate embodied service of 20 years in the case of Officer and 15 years in the case of

Personnel Below Officer Rank, shall be eligible for service pension."

ANALYSIS

12. We have heard the learned counsel for the parties at length and gone through the records produced before us. After perusal of the records produced and arguments advanced, we find that it is an undisputed fact that the applicant was discharged from service w.e.f. 31.05.2013 under TA Rules 13 (3) item III Vol. I and 14 (a) of TA Regulations 1948 (Revised Edition 1976). The applicant was discharged in Low Medical Category (LMC) for the disability of '**Facetal Low Backache**' which was assessed at @ 20% for life. The applicant is in receipt of the disability element of pension vide PPO No. S/32299/2015 (ARMY) dated 29.07.2015. Vide the instant OA, the applicant seeks the benefit of service element of the disability pension as the same was denied to the applicant as he has not rendered minimum 15 years of embodiment service.

13. Upon perusal of Annexure R-2 annexed to the Counter Affidavit filed on 05.09.2017 by the respondents, it has been observed that the applicant was enrolled in the Territorial Army in 103 Inf Bn (TA) SIKH LI of the Indian Army. As per the

annexure placed on record, it has been brought out by the learned counsel for the respondents that the total embodiment service of the applicant is 11 years and 199 days.

14. The learned counsel for the respondents during the course of the hearing had drawn the attention to Regulation 184 (a) (i) of the PRA 2008 according to which aggregate or minimum qualifying embodiment service shall not be less than 15 years for Personnel Below Officers Rank (PBORs). Regulation 184 (a) (i) of the PRA 2008 states to the effect:

“Rule. 184 (a) Subject to following provisions, the service qualifying for pension and reckonable emoluments in case of Territorial Army personnel shall be as specified in Section-2 of Chapter-I:

- (i) Aggregate of qualifying embodied service whether continuous or broken shall count for service pension and gratuity. For calculating the total embodied service the break in embodied service due to disembodiment shall be treated as condoned but the period of breaks itself shall not be treated as qualifying service for pension. Where qualifying embodied service has been rendered in broken spells, 5 percent cut shall be imposed on the pension of the Personnel Below Officer Rank who have completed 15 years or more of aggregate embodied service, but have not completed 20 years of aggregate embodied service.”***

From the record available on record, it is prima facie undisputed that the total period of embodiment service of the applicant is less than 15 years, i.e., 11 years and 199 days.

15. Since the applicant has not rendered the aggregate qualifying embodiment service of 15 years as prescribed under Regulation 184 (a) (i) of the PRA 2008, the claim of the applicant for the grant of service element of the disability pension is not legally sustainable and hence, the prayer of the applicant for the grant of service element of disability pension is dismissed.

16. Thus, the present O.A. is rejected being devoid of merit.

17. Consequently, Miscellaneous Application(s) if any, stands disposed off accordingly.

Pronounced in the open Court on this ²⁴ 14 day of February, 2025.

**[JUSTICE RAJENDRA MENON]
CHAIRPERSON**

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

/PRGx/