

**ARMED FORCES TRIBUNAL
REGIONAL BENCH
JABALPUR**

17 July, 2023

CORAM :

**HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN GOPAL R, MEMBER (A)**

31.

OA 46/2021 with MA 87/2021

**No 469247A Ex Honorary Subedar Major Bharat Singh,
S/o Shri PS Raghuvanshi, R/o House No. 3 Gurukul Colony,
Near MES Inspection Bungalow, Kodariya Mhow,
District Indore (M.P).**

.....Applicant

Versus

- 1. Union of India,**
Through the Secretary, MoD
Government of India, New Delhi.
- 2. COAS,**
Integrated HQ of MoD (Army),
DHQ PO, New Delhi.
- 3. OIC, Records**
RAJ RIF
C/o 56 APO
- 4. PCDA (Pension)**
Draupadi Ghat, Allahabad (U.P.).

.....Respondents

For Applicant	: Mr KC Ghildiyal, Sr Advocate with Mr HC Singh and Mr Pradeep Dwivedi, Advocates
For Respondents	: Mr Vikram Singh, CGSC

ORDER

MA 87/2021

Keeping in view the averments made in this application, finding the same to be bonafide, in the light of the decision in *Union of India and others Vs Tarsem Singh [(2008) 8 SCC 648]*, the same is allowed condoning the delay in filing the OA, MA stands disposed of.

OA 46/2021

1. The applicant was enrolled in the Army on 16.08.1979 and had been discharged from service w.e.f. 31.08.2007 under AR 13 (3) I (i) (a), on completion of terms of engagement after rendering 28 years and 16 days service. The applicant had been declared as a battle casualty and was in P 3 (Permanent) medical category w.e.f. 21.07.2007 due to **“GUN SHOT WOUND (RT) FLANK & (RT) GLUTEAL REGION”**. In the Release Medical Board held on 25.07.2007 the ibid injury was held as attributable to military service with disability assessed at 30% for life. Accordingly, the applicant had been granted and paid Service Element as well as War Injury Element (WIE) by the PCDA (P) without broad banding of WIE till 31.12.2015.

2. Since it is a case of broad banding of WIE from 30% to 50% and we proceed to dispose of the case after hearing both sides as well as after perusal of the documents.

3. The Counsel of the applicant is claiming that the applicant is entitled for rounding off of WIE from 30% to 50% w.e.f. 01.09.2007 as

well as based on this revision, refixation of his WIE w.e.f. 01.01.2016 and also payment of the consequent arrears. Learned Counsel for the applicant submitted that, for the period 01.09.2007 to 31.12.2015, as WIE, a sum of only Rs. 1,720/- + DA was being paid instead of Rs. 4,300/- (50% of Rs 8,600/- i.e., entitlement for 100% disability). Accordingly, in the VII CPC his WIE should have been revised by applying fitment factor of 2.57, whereas he was being paid only Rs. 9,459/- p.m. as WIE. Over a period of time the applicant had taken up the case of broad banding with various authorities, all of whom had rejected the same on the ground that being a post 01.01.2006 retiree, benefit of rounding off of WIE was not admissible to him as he had been discharged on completion of terms of engagement and not invalided out of service before completion of terms of engagement (Annexure A/8).

4. The respondents also state that as per policy on the subject vide MoD letter No. 1(2)/97/D(Pen-C) dated 31.01.2001, the applicant is not eligible for grant of rounding off benefit of WIE w.e.f. 01.09.2007 to 31.12.2015 as the same was applicable to only those personnel who have been invalided out from service on attributable or aggravated counts. As per MoD letter No. 17(01)/2017/D(Pen/Policy) dated 23.01.2018 rounding off benefits of WIE has been extended to the applicant w.e.f. 01.01.2016.

5. The issue relating to grant of broad banding is no longer res integra in view of the Hon'ble Apex Court vide judgment dated 31.03.2011 passed in *Civil Appeal 5591/2006 in Cap KJS Buttar Vs. Union of India & Ors* extended the benefit of broad banding to all personnel irrespective

of being invalided from service or retired in low medical category on completion of service before or after 1996 as also in its order dated 10.12.2014 in ***Union of India & Ors. Vs. Ram Avtar, in Civil Appeal No. 418/2012***, wherein the Hon`ble Apex Court has held that irrespective of the nature of discharge personnel getting disability pension would be entitled to the benefit of rounding off.

6. Based on the orders passed by the Hon`ble Supreme Court in **Ram Avtar** (supra), wherein the Hon`ble Supreme Court directed the respondents to grant the said benefit also to personnel who have not only been invalided out from service but those falling in other categories, the Govt. of India had also decided to implement the aforesaid direction of the Hon`ble Supreme Court to grant the benefit of broad banding of disability element of pension to the armed forces personnel, who have retired or discharged on completion of the terms of engagement with disability aggravated or attributable to military service from the date mentioned in the court order which has been communicated by Govt. of India, Ministry of Defence, Department of Ex-Servicemen Welfare D(Pension/Legal) vide letter No. 3(11)2010- D Pen/Legal-Pt.V dated 18.04.2016. Relevant portions of the letter is set out below:

“(a) the Hon`ble Supreme Court vide order dated 10.12.2014 dismissed more than 800 Civil Appeals tagged with Civil Appeal No. 418 of 2012 filed by the Union of India Vs. Ram Avtar challenging grant of broad banding of disability element by AFTs to Armed Force Personnel other than “Invalided out” from service. The Hon`ble Supreme Court ruled that an Armed Force Personnel

retired on completion of tenure with disability aggravated by or attributable to military service is eligible for broad banding of disability pension/element.

(b) Accordingly, approval of competent authority is hereby conveyed for implementation of Court/AFTs orders granting broad banding of disability element to an armed force personnel retired or discharged on completion of terms of engagement with disability aggravated by or attributable to military service from the date mentioned in respective court orders.”

7. Similarly, a Full Bench of the AFT, PB, New Delhi vide order dated 01.12.2017 in *OA 1439/2016, Ex Sgt Girish Kumar Vs. UOI & Ors* and other related matters had held as under:-

“55. After having fully discussed the issue involved before us and to set the controversy at rest vis-à-vis arrears of broad banding of the disability/war injury element of disability pension on the ground of delay in filing application(s) by the individual/applicant(s), we conclude thus:

(i) Armed Forces personnel who have been invalidated/superannuated/completed terms of service/discharged under normal circumstances with disability, pre or post 01.01.1996, (including the applicants) will be entitled to broad banding of disability/war injury element. Armed Forces personnel

who retired pre 01.01.1996 will be entitled to the arrears of broad banding with effect from 01.01.1996 and in the case of those who retired on or after 01.01.1996 will be entitled to arrears with effect from the date of their retirement

(ii) Armed Forces personnel who were premature retirees/proceeded on premature discharge with disability will be entitled to broad banding of disability/war injury element of pension with effect from either 01.01.2006 or the date of their retirement. There will, however, be no restriction of date for premature retirees to be eligible for disability/war injury benefits since the earlier restriction on pre 01.01.2006 premature retirees has been struck down.

(iii) In all cases at (i) and (ii) preceding, there will be no restriction of three years on arrears and arrears will be paid according to eligibility (as stated preceding)."

8. Therefore, the applicant is entitled to the benefit of broad banding of WIE w.e.f. 01.09.2007 to 31.12.2015. The respondents will pay the benefit of broad banding from 30% to 50% for the above-mentioned period. Based on this revision, the WIE will be refixed w.e.f. 01.01.2016 and revised PPO incorporating the change will be issued. The payment of arrears w.e.f. 01.09.2007 to 31.12.2015 and from 01.01.2016 onwards will be paid within a period of four months from the date of this order, in

default thereof, shall carry interest @ 9% per annum till the date of actual payment.

9. Accordingly, the **OA is allowed**. No order as to costs.

(JUSTICE RAJENDRA MENON)
MEMBER (J)

(LT GEN GOPAL R)
MEMBER (A)

A/L