ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A No. 22 OF 2011

WEDNESDAY, THE 3RD DAY OF APRIL, 2013/13TH CHAITHRA, 1935

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)

HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

MADHUSOODANAN, P, NO.14374251 N EX HAV,
AGED 46 YEARS, S/O S. PATCHAN, MARACHEENIVILA
KARTHIKA VEEDU, VAZHOTTUKONAM,
KODUNGANOOR P.O, VATTIYOORKKAVU,
THIRUVANANTHAPURAM.

BY ADV. SRI. B.HARISHKUMAR

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT (DEFENCE),
MINISTRY OF DEFENCE,
NEW DELHI - 11.

2. THE SENIOR RECORD OFFICER,
ARTILLERY RECORDS SIGNALS,
NASIK ROAD CAMP – 422102,
MAHARASHTRA (MR).

3. THE DIRECTOR GENERAL, PRINCIPAL CONTROLLER
OF DEFENCE ACCOUNTS (PENSION), ALLAHABAD,
UTTAR PRADESH – 14.

4. THE MANAGING DIRECTOR,
ARMY GROUP INSURANCE FUND,
AFGH BHAVAN, RAO TULARAM MARG,
VASANTH VIHAR, NEW DELHI – 57.

R1 TO R3 BY ADV. SRI. P.J.PHILIP (CENTRAL GOVERNMENT COUNSEL)
R4 BY ADV. SRI. MOHAN IDICULLA ABRAHAM

O R D E R

Shrikant Tripathi, Member (J):

1. Heard the counsel for the applicant and the respondents and perused the record.

2. The applicant has filed the instant Original Application under Section 14 of the Armed Forces Tribunal Act for a direction to the respondents to re-commute the disability element of pension admissible to him. He has further prayed for a direction to provide him the benefit of rounding off of the disability pension in terms of para 7.2 of the Government of India, Ministry of Defence, Letter No. 1(2)/97/D (Pen-C) dated 31st January 2001, (hereinafter referred to as Government Letter dated 31.1.2001). Apart from the aforesaid reliefs, he has also claimed the disability benefits under the Army Group Insurance Scheme.

3. The applicant was enrolled in the Army, Regiment of Artillery on 2nd September 1983 and was discharged with

effect from 31st of July 2000 at his own request on extreme compassionate grounds under Army Rule 13(3) item iii(iv), before fulfilling the conditions of enrollment. At the time of the discharge, the applicant was in low medical category CEE (permanent) due to the diseases (1) Central Retinal Venous Occlusion Right eye–362 and (2) Non insulin dependent diabetes melitus-250. He was accordingly examined by a Release Medical Board on 28th June 2000 which found the disability No.1 at 30% and disability No.2 at 20% for two years. The Medical Board further opined that the composite assessment of both the disabilities was at 50% for two years. In view of the fact that the applicant had been allowed discharge at his own request, his claim for disability pension was denied. However, he was granted service pension and other retiral benefits. The applicant filed WP(C).No.15049 of 2007 before the Hon'ble Kerala High Court which was disposed of on 1st June 2009 with the direction to the respondents to sanction and pay the

disability pension to the applicant. The direction of the High Court made in paragraph 7 may be re-produced as follows:

> " 7. For all the above reasons the petitioner is entitled to succeed in this writ petition. Accordingly, I hold that the petitioner is entitled to disability pension also as recommended in Ext.P3 proceedings of the medical board. Orders sanctioning disability pension to the petitioner shall be passed and arrears paid to the petitioner as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment. Needless to say, this shall be in addition to the service pension already sanctioned to the petitioner."

Keeping in view the aforesaid direction of the learned single Judge, the respondents sanctioned the disability element of pension to the applicant with effect from the date of his discharge at the rate of 50% for life. The question of the applicant's entitlement to the disability pension raised in the aforesaid writ petition is subjudice before the Hon'ble High Court of Kerala in W.A.No.375 of 2010 filed by the respondents, therefore, we do not consider it proper to

enter into that question.

4. So far as the applicant's claim for rounding off of the disability pension is concerned, it has no substance in view of the fact that the applicant has already been sanctioned 50% disability pension and there is no provision to extend the percentage of 50% to higher side. In this connection paragraph 7.2 of the Government letter dated 31st January 2001, may be reproduced as follows:

> "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:-

Percentage of disability as assessed by invaliding medical board	***Percentage to be reckoned for computing of disability element***
Less than 50	50
Between 50 and 75	75
Between 75 and 100	100

Rounding off between 50% and 75% is permissible to the extent of 75%, but no rounding off beyond 50% is permissible if the percentage of the disability is already

50%.

5. So far as the claim with regard to the benefits under the Army Group Insurance Scheme is concerned, the learned counsel appearing for the 4th respondent submitted that no benefit was admissible to the applicant under the aforesaid Scheme due to the reason that the applicant had himself requested for his discharge. In this connection, the learned counsel for the respondents placed reliance upon paragraphs 58 and 59 of the aforesaid Scheme which may be re-produced as follows:

"PART IV- DISABILITY BENEFITS

58. AGIF Disability Scheme was introduced on 01 Jan 80 to compensate those personnel whose service was cut short and were invalided out of service in Medical category EEE with 40 per cent and above disability. The progressive improvement of percentage of disability criteria was introduced for disability benefit as under :-

Disability Percentage	Medical Category	Eligible date for those Discharged/Invalided out before completing Contractual Service on or after
(a) 40% and above	BEE, CEE or EEE	27 Sep 1987
(b) 30% and above	-do-	01 Oct 1990

(c) 20% and above	-do-	01 May 1992

59. The objective of AGIF Disability Scheme is to provide financial benefit to individual whose service is cut short due to invalidment or release on medical grounds before completion of the terms of engagement or service applicable to that rank. The disability benefit is paid as a lump sum benefit based on initial assessment by Invaliding Medical Board or Release Medical Board before completing the contractual period of service for the rank and meeting the eligibility conditions. The disability benefit admissible is 50 per cent or as specified of the prevalent insurance cover for 100 percent disability on the date of invalidment and proportionately reduced for lower percentage of disability upto 20 percent or as specified. However, the following categories of personnel are NOT eligible for disability cover :-

(a) Personnel whose disability is detected and are awarded disability pension element at the time of proceeding on normal pension/discharge/release on completion of terms of engagement or service limits for the rank/age of superannuation.

(b) P & T deputationists invalided out of military service but continue in service in their parent department on reversion from Army.

(c) Personnel proceeding on pension/discharge/release at their own request or after expressing unwillingness to serve in a sheltered appointment being in permanent EEE, CEE or BEE medical category or due to any other reason.

(d) Personnel granted extension, who were LMC (Temporary) or permanent or were in hospital on the crucial date of

commencement of extension and subsequently released in LMC permanent or invalided out in category EEE during the currency of the extended tenure.

(e) The career of an individual should be cut short which implies that any one who serves upto the laid down age of retirement or service limit for the rank even though with disability (20% and above) is not eligible.

(f) Personnel invalided out of service due to disease of pre-enrolment origin.

(g) Discharged on disciplinary grounds/undesirable.

(h) Personnel discharged in Low Medical Category due to Alcohol/Drug Dependence Syndrome. "

6. In this connection the learned counsel for the applicant submitted that paragraph 58 grants the benefit of the Scheme to a person whose tenure was cut short and who was invalided out of service in medical category EEE with 40% and above disability, therefore, despite the discharge on request, the applicant was entitled to the benefit due to the reason that his tenure was also cut short

due to the discharge and he had a disability aggravated by the military service.

7. A perusal of the aforesaid paragraphs 58 and 59 of the Scheme, therefore,clearly reveals that disability benefits under the Scheme is payable to those personnel whose service was cut short due to the invalidment from the service on the ground of being in medical category EEE with 40% and above disability. But according to paragraph 59(c) of the Scheme, the benefit is not payable to a personnel who proceeds on pension/discharge/release at his own request or on his expressing unwillingness to serve in a shelter appointment and is in permanent EEE, CEE or BEE medical category or due to any other reason, therefore, it is to be seen whether a person who sustains a disability attributable to or aggravated by the military service and finds himself unable to serve the Army and accordingly allowed to be discharged on request can be said to be invalided out of service. If the answer is in the affirmative, the benefit

provided by paragraph 58 of the Scheme is available to the individual notwithstanding the provisions contained in paragraph 59(c) of the Scheme. But if the answer is in the negative, the applicant will have no case.

8. In this connection we have to refer to certain important decisions. The Apex Court in **K.J.S.Buttar v. Union of India (JT 2011 (3) SC 626)** interpreted the expression "invalidment from service" and accordingly held that as per the Defence Service Regulations/Pension Regulations for the Army, 1961, where any officer is suffering from disability attributable to or aggravated by military service, he shall be deemed to have been invalided out of service.

9. A Division Bench of the Delhi High Court in **Mahavir Singh Narwal v. Union of India** (2004 (74) DRJ 661) had occasion to consider the aforesaid question and

held as follows:

> "6. On careful perusal of the aforesaid rule it is manifestly clear that invalidated from service is necessary condition for grant of disability pension. What has to be seen for entitlement for disability pension is whether an individual at the time of his release was in a low medical category than that in which he was recruited if it was so then such person will be treated as invalidated from service. It is the admitted case of the parties that at the time of recruitment the petitioner did not have any disability. It is also admitted case of the parties that the petitioner got disability on account of stress and strain of military service and his category was initially lower down temporary (sic) to CEE on 21st September, 1978 for a period of 6 months and after the Release Medical Board examined the petitioner on 11th April 1979 it found the disability to be 30% aggravated by stress of military service and he was down graded to permanent low medical category. Once the petitioner was in low medical category according to Rules 1 and 2 of Appendix II of Pension Regulations 173 he shall be treated as invalidated from service. It seems that on careful consideration of the Pension Regulations 173, read with Rules 1 and 2 of Appendix II, the respondents themselves have recommended for grant of disability pension to the petitioner ....."
>
> (emphasis supplied)

The Delhi High Court further held that merely because a person has been discharged from service on compassionate ground, although his disability has been acquired on account of his stress and strain of military service, will not be a ground to reject the claim of disability pension, if he has been invalidated as per the Appendix II of Entitlement Rules for Casualty Pensionary Awards, 1948.

10. In view of the aforesaid decisions, it is crystal clear that if a person sustains a disability attributable to or aggravated by the military service and seeks discharge from an Armed Forces on the ground of the disability and is allowed to do so, he is also deemed to be invalided out of service within the meaning of para 58 of the aforesaid Scheme and as such the claim for the benefits under the Scheme cannot be denied solely on the basis of the provisions contained in para 59(c) of the Scheme. In this view of the matter, the applicant's case needs to be re-examined by the respondents in the light of the aforesaid

decisions. As the matter has to be reconsidered by the respondent No.4 in the light of the aforesaid decisions, we do not consider it proper to express any opinion regarding the merits of the applicant's entitlement to the disability benefits admissible under the Scheme.

11. So far as the claim for re-commutation of disability pension is concerned, it has been denied on the ground that the re-commutation of disability element of pension was payable to only those who were invalided out of service prior to 1st of January 1996 and were in receipt of disability element of pension on 1st of July 2009. As the applicant was discharged from service after 1st of January 1996, so he was not granted the benefit of re-commutation of disability element of pension. The aforesaid decision was taken by the respondents in terms of Government of India, Ministry of Defence letter No.10(01)/D(Pen/Pol)/2009/Vol.II dated 19th January 2010. In our view, the stand of the respondent in denying the benefit of re-commutation of

disability element of pension to the person who retired after 1st of January 1996 is not only arbitrary but also violative of Articles 14 and 16 of the Constitution of India.

12. To make a classification between the pensioners only on the basis of the date of retirement is not permissible and this principle is very clearly held by the Apex Court in **D.S.Nakara v. Union of India and Ors. ((1983) 1 SCC 305.** In that case, the Apex Court held that the classification amongst pensioners based on the date of retirement amount to denying equality as enshrined in Article 14 of the Constitution of India. The Constitution Bench further held that for the purpose of pension benefits, the pensioners form a homogeneous class which cannot be divided by arbitrarily fixing an eligibility criterion unrelated to the purpose of revision of pension. A similar proposition has been laid down even in the case of **K.J.S.Buttar's case (supra**), wherein the Apex Court very clearly held that restriction of the benefit to only officers who were invalided

out of service after 1.1.1996 was violative of Articles 14 and 16 of the Constitution of India, as the scheme of rounding off of the disability pension was in the form of liberalization of an existing scheme, therefore, all pensioners were required to be treated equally. The Apex Court while propounding the said principle, examined certain previous decisions rendered in **Union of India vs. Deoki Nandan,** 1992 Suppl.(1) SCC 323**, State of Punjab vs. Justice S.S. Dewan,** (1997) 4 SCC 569 and **Union of India vs. S.P.S. Vains(Retd.) & Ors.** 2008(9) SCC 125. The observations of the Apex Court made in paragraphs 11, 12,13,14 being relevant are reproduced as follows:

> *"11. In our opinion, the restriction of the benefit to only officers who were invalided out of service after 1.1.1996 is violative of Article 14 of the Constitution and is hence illegal. We are fortified by the view as taken by the decision of this Court in* ***Union of India &*** Anr. vs. Deoki Nandan Aggarwal *1992 Suppl.(1) SCC 323, where it was held that the benefit of the Amending Act 38 of 1986 cannot be restricted only to those High Court*

Judges who retired after 1986.

*12. In **State of Punjab** vs. **Justice S.S. Dewan** (1997) 4 SCC 569 it was held that if it is a liberalization of an existing scheme all pensioners are to be treated equally, but if it is introduction of a new retrial benefit, its benefit will not be available to those who stood retired prior to its introduction. In our opinion the letter of the Ministry of Defence dated 31.1.2001 is only liberalization of an existing scheme.*

*13. In **Union of India & Anr.** vs. **S.P.S. Vains (Retd.) & Ors.** 2008(9) SCC 125 it was observed :*

> *"26. The said decision of the Central Government does not address the problem of a disparity having created within the same class so that two officers both retiring as Major Generals, one prior to 1-1-1996 and the other after 1-1-1996, would get two different amounts of pension. While the officers who retired prior to 1-1-1996 would now get the same pension as payable to a Brigadier on account of the stepping up of pension in keeping with the fundamental rules, the other set of Major Generals who retired after 1-1-1996 will get a higher amount of pension since they would be entitled to the benefit of the revision of pay scales after 1-1-1996.*
>
> *27. In our view, it would be arbitrary to allow such a situation to continue since the same also offends the provisions of Article 14 of the Constitution.*
>
> *28. The question regarding creation of different classes within the same cadre on the basis of the doctrine of intelligible differentia having nexus with the object to be achieved, has fallen for consideration at various intervals for the High Courts as well as this Court, over the years.*
>
> *29. The said question was taken up by a Constitution Bench in*

> ***D.S. Nakara*** *where in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that Article 14 of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counterproductive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of Article 14 of the Constitution.*
>
> *30. However, before we give such directions we must also observe that the submissions advanced on behalf of the Union of India cannot be accepted in view of the decision in* ***D.S. Nakara*** *case. The object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of the same class equally. To hold otherwise would cause violence to the provisions of Article 14 of the Constitution. It could not also have been the intention of the authorities to equate the pension payable to officers of two different ranks by resorting to the step-up principle envisaged in the fundamental rules in a manner where the other officers belonging to the same cadre would be receiving a higher pension."*

In this view of the matter, the benefit of re-commutation of disability element of pension is liable to be extended to the

applicant, notwithstanding the aforesaid Government letter dated 19th January 2010. We, therefore, direct the respondents to reconsider the matter and take suitable decision expeditiously on the applicant's request for the benefit of re-commutation of disability element of pension, especially when the benefit was granted much after his retirement under order of the Court.

13. However, if any adverse decision is taken by the Hon'ble High Court of Kerala in W.A.No. 375 of 2010 holding that the applicant is not entitled to the disability pension, in that eventuality, this order will be subject to that decision.

14. The Original Application is partly allowed. Respondents No.1 to 3 are directed to re-consider the applicant's request for granting him the benefit of re-commutation of disability element of pension and pass appropriate order thereon within four months from the date of receipt of a copy of this order, subject to the outcome of

the W.A.No. 375 of 2010 pending in the Hon'ble High Court of Kerala.

15. The respondent No.4 is directed to reconsider the applicant's request for grant of disability benefit under the Army Group Insurance Scheme in the light of the observations made hereinbefore and pass appropriate order within four months from today. The remaining claims of the applicant stand dismissed.

16. There will be no order as to costs.

17. Issue copy of the order to both side.

Sd/- Sd/-

LT.GEN.THOMAS MATHEW MEMBER (A)

JUSTICE SHRIKANT TRIPATHI MEMBER (J)

an (true copy)

Prl.Pvt.Secretary