

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

M.A.NO.472 OF 2016 AND O.A. NO. 194 OF 2016

TUESDAY, THE 31ST DAY OF JANUARY, 2017/11TH MAGHA 1938

CORAM:

HON'BLE MR. JUSTICE S.S.SATHEESACHANDRAN, MEMBER (J)

HON'BLE VICE ADMIRAL M.P.MURALIDHARAN, AVSM & BAR, NM, MEMBER (A)

APPLICANT:-

COLONEL (RETD) RAVI.K.,
(IC NO.41918 'P' OF INDIAN ARMY ARTILLERY)
KRISHNA VILASAM, VH COLONY, KARIMBAM P.O.,
TALIPARAMBA, KANNUR - 670 142.

BY ADV SHRI V.K.SATHYANATHAN

VERSUS

RESPONDENTS:-

1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY
MINISTRY OF DEFENCE, SOUTH BLOCK,
NEW DELHI - 110 011.
2. THE CHIEF OF ARMY STAFF,
COAS'S SECRETARIAT,
INTEGRATED HEAD QUARTERS OF MOD (ARMY).
SOUTH BLOCK, NEW DELHI - 110 011.
3. THE ADJUTANT GENERAL,
OFFICE OF THE ADJUTANT GENERAL,
INTEGRATED HEAD QUARTERS OF MOD (ARMY)
SOUTH BLOCK, NEW DELHI - 110 011.
4. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS)
OFFICE OF THE PCDA (P), DRAUPADIGHAT,
ALLAHABAD, UTTARPRADESH - 211 014.

BY ADV.SHRI C.B.SREEKUMAR, SENIOR PANEL COUNSEL

O R D E R

VAdm M.P.MURALIDHARAN, MEMBER (A):

1. The Original Application has been filed by Colonel Ravi.K., No.41918 P (Retd), seeking the benefit of broadbanding of disability element of disability pension granted to him. The applicant has also sought that Regulation 37(b) of the Pension Regulations for the Army, 2008 be quashed as it denies the benefit of Regulation 94(c) of the Pension Regulations. The Original Application has been accompanied by MA.No. 472 of 2016 for condoning the delay of 03 years, 11 months and 10 days. Having regard to the issue raised in the petition, which has already been settled by this Tribunal in similar applications prosecuted condoning the delay, the delay is condoned and MA.No. 472 of 2016 is disposed of.

2. The applicant, who had earlier filed O.A.No.13 of 2016 for the benefits of broadbanding, had been permitted to withdraw the same with liberty to file a fresh application

vide Orders dated 18 July 2016 as the applicant had not challenged the Regulations in Pension Regulations for the Army, 2008, which denied such benefits to those discharged after coming into force of said Regulations (Annexure-A5).

3. The applicant who had been enrolled into the Army in the Corps of Signals in Jan 1973, was commissioned into the Regiment of Artillery on 09 June 1984. He superannuated on 30 Sep 2011, after the completion of 27 years and 03 months of commissioned service. The applicant, in addition to regular service pension, was also granted disability element of pension at the rate of 20% for life for the disability "Bilateral SNHL" (Annexure-A2).

4. Shri VK Sathyanathan, the learned counsel for the applicant, submitted that based on recommendations of V Central Pay Commission, the Government had approved

the broadbanding of disability element of disability pension vide Ministry of Defence Letter No. 1(2)/97/D(Pen-C) dated 31 Jan 2001, however, restricting the benefit of broadbanding only to personnel who had been invalided out of service. This provision was set aside by the Hon'ble Apex Court in **Union of India vs. Ram Avtar, Civil Appeal No.418 of 2012**, and it was held that even those personnel with disability attributable/aggravated by service, who had been retained in service till the completion of their terms of engagement or till the age of superannuation were also eligible for the benefit of broadbanding. However, Regulation 37(b) of the Pension Regulations for the Army, 2008, denies the benefit of broadbanding, which has been promulgated vide Regulation 94(c) to those who were retained in service, despite the disability till the age of superannuation. The learned counsel submitted that the applicant, who had preferred an application before the Respondents for the benefit of broadbanding, was informed by Respondent

No.3 (Adjutant General's Branch) that he was not eligible for the benefit of broadbanding, as he had retired on superannuation and was not invalided out (Annexure-A4). The learned counsel submitted that as this was against the principles enunciated by the Hon'ble Apex Court in **Ram Avtar (Supra)**. Regulation 37(b) be quashed and the applicant be given the benefit of broadbanding of disability element of his pension.

5. The respondents, on the other hand, submitted that the applicant was not entitled to the benefit of broadbanding, as he had retired from service on superannuation and that their stand on the subject was as indicated in Annexure-A4.

6. Heard rival submissions and perused records.

7. It is not disputed that the applicant was granted disability element of pension at 20% for life on his retirement (Annexure-A2). The only issue for consideration

before us is whether the applicant is entitled to the benefit of broadbanding.

8. The stand taken by the respondents is that as the applicant retired from service on superannuation and was not invalided out of service, he was not entitled to the benefit of rounding off/broadbanding. Since the applicant retired from service on 30 Sep 2011, Pension Regulations for the Army 2008 would apply. Therefore we also need to look at impact of Reg 37(b) of the said Regulations which denies the benefit of rounding off to Personnel who retired on attaining the prescribed age of superannuation. The issue is no more res integra as this Tribunal in OA.No.93 of 2016 had examined the issue and struck down Reg 37(b). The Tribunal had held as follows:

"17. The benefit of rounding off/broadbanding of disability element of pension was introduced based on recommendations of the V CPC vide Ministry of Defence Letter No. 1(2)/97/D(Pen-C) dated

31 Jan 2001. While the benefit of broadbanding was granted to those who were in service on 01 Jan 1996 or joined service thereafter in accordance with para 7.2 of the letter, vide para 8.2 of the letter the benefit of para 7.2 was not applicable to those who were retained in service, despite the disability and were retired/discharged on attaining the age of retirement or on completion of tenure. The above issue was looked into by the Hon'ble Apex Court in **UOI & Ors. v. Ram Avtar, Civil Appeal No.418 of 2012**, and after examining the provisions of the said letter, the Hon'ble Apex Court held that even an individual who retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by Military Service, is entitled to the benefit of rounding off of disability pension.

18. As regards the applicant, since he was discharged in May 2011, Pension Regulations for the Army, 2008 would apply. Regulation 53 as noted earlier pertains to grant of disability element of disability pension. Regulation 53 however states that the provisions of Regulation 98(c) which is broadbanding of the disability element of pension, will not be

applicable to those who are released/retired/discharged on completion of their terms of engagement or on attaining the prescribed age limit. It is observed that Regulation 53 is modification of the earlier Regulation 179 of Pension Regulations for the Army 1961, pertaining to disability at the time of retirement/discharge. It is also observed that the Regulation has been modified in accordance with para 8 of the Ministry of Defence Letter dated 30 Jan 2001 quoted earlier. As brought out, the said provision of denying broadbanding to personnel who were discharged on completion of their terms of engagement, was struck down by the Hon'ble Apex Court in **Ram Avatar (Supra)**. It is also observed that a revised policy on broadbanding was promulgated by the Government vide Ministry of Defence Letter No. F.No.3(11)2010-D(Pen/Legal)-Pt-V dated 18th April 2016 in view of the judgment of the Hon'ble Apex Court in **Ram Avatar (Supra)**. Para 2 of the letter being relevant is reproduced below:-

"2. The matter of implementing Hon'ble Apex Court judgment dated 10.12.2014 in case of Civil Appeal No.418 of 2012 was taken up with Department of Expenditure, Ministry of Finance for consideration. Department of Expenditure, Ministry of Finance has agreed to implement orders of

the Courts on the matter of broad banding of disability element in the case of personnel who are retained in service till normal retirement. 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.”

19. It is therefore observed that in keeping with the directives of the Hon'ble Apex Court, the Government approved granting of benefit of broadbanding of disability element to even personnel, who were retired or discharged on the completion of their terms of engagement, where the disability was aggravated or attributable to Military Service. It is further observed that the Policy Letter issued on 18th April 2016 does not make any differentiation between those who retired when the earlier Pension Regulations for the Army 1961 were in force and those retired after the Pension Regulations for the Army 2008 came into effect. It is therefore evident that the Government itself has done away with the

provisions of Regulation 53(b) ie for PBOR and its equivalent for officers ie 37(b) of the Pension Regulations for the Army 2008. When that be so, even though the letter does not indicate the deletion of the two sub-regulations, in keeping with the principles enunciated by the Hon'ble Apex Court in **Ram Avatar (Supra)** and the subsequent policy changes, we find both regulations are ultra vires and deserve to be struck down and we do so. In view of the above, the applicant would also be eligible for the benefit of rounding off in accordance with law.

9. In our view therefore, the applicant is also eligible for the benefit of rounding off of disability element of pension and Annexure A4 is therefore quashed.

10. In view of the foregoing, the Original Application is partly allowed declaring that the applicant is entitled to the benefit of rounding off of disability pension in accordance with law from the date of grant of disability pension for life ie with effect from 01 Oct 2011. The respondents are directed to pay the arrears on rounding off of his disability pension within a period of four months from the date of receipt of a copy of this order, failing

which the unpaid amount will carry simple interest at the rate of 8% per annum.

11 .There will be no order as to costs.

12 .Issue free copy to the parties.

Sd/-
VICE ADMIRAL M.P. MURALIDHARAN,
MEMBER (A)

Sd/-
JUSTICE S.S.SATHEESACHANDRAN
MEMBER (J)

(true copy)

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