

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

**O A Nos.120 of 2011, 11 of 2012, 81 of 2012, 87 of 2012,
4 of 2012, 27 of 2012,167 of 2012, 90 of 2012 and 122 of 2011**

THURSDAY, THE 21ST DAY OF MARCH, 2013/ 30TH PHALGUNA, 1934

CORAM:

HON'BLE MR. JUSTICE SHRI KANT TRIPATHI, MEMBER (J)
HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

O.A.No.120 OF 2011

APPLICANT:

RAMAN RAVEENDRAN,
EX-TIME SCALE NAIK NO.1352228A,
S/O LATE KUNHIRAMAN, AGED 63 YEARS,
MULLAVAYALIL HOUSE,(P.O) PATTAMTHURUTH,
(VIA) PERINAD, KOLLAM-691601, KERALA STATE..

BY ADV. SRI. P.K. MADHUSOODHANAN

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, GOVERNMENT OF INDIA,
MINISTRY OF DEFENCE,
DEPARTMENT OF EX-SERVICEMEN WELFARE,
NEW DELHI- 110 011.
2. OFFICER IN-CHARGE RECORDS,
RECORD OFFICE, MADRAS ENGINEER GROUP-900 493,
C/O 56 APO.
3. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS(PENSION)
ALLAHABAD – 211 001, UTTAR PRADESH.
4. DEFENCE PENSION DISBURSING OFFICER,
BUILDING TB ROAD, POLAYATHODU,
KOLLAM -691 010, KERALA.

BY ADV.SMT.E.V.MOLY, CENTRAL GOVERNMENT COUNSEL.

O.A.No.4 OF 2012

APPLICANT:

C.G.VARGHESE, SM, AGED 50 YEARS,
(EX-HAVILDAR NO.13682224 F) S/O GEEVARGHESE CHACKO
EDITHITTENKERIL HOUSE, PANDANKARY PO,
EDATHUA, ALAPPUZHA, KERALA 689 573.

BY ADV. SRI. V.K.SATHYANATHAN.

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI.
2. THE CHIEF OF THE ARMY STAFF,
COAS's SECRETARIAT, INTEGRATED HEAD QUARTERS OF
MINISTRY OF DEFENCE (ARMY),
DHQ PO, NEW DELHI-110 011.
3. THE RECORD OFFICER, RECORDS,
BRIGADE OF THE GUARDS, POST BOX NO.19,
KAMPTEE, NAGPUR, MAHARASHTRA-441 001..
4. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS),
OFFICE OF THE PCDA(P), DRAUPADI GHAT,
ALLAHABAD, UP- 211 014.

BY ADV.SRI.TOJAN J.VATHIKULAM, CENTRAL GOVERNMENT COUNSEL.

O.A.No.11 OF 2012

APPLICANT:

N.SADANANDAN, EX SEA I NO.053559, AGED 64 YEARS,
S/O LATE E. NANU, KUZHIYIL VEEDU,
KOTTIYAM PO, KOLLAM DISTRICT
KERALA - 691 571.

BY ADVS. SRI. M.RAJAGOPALAN & SRI. 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 NAVAL STAFF,
INTEGRATED HEAD QUARTERS OF
MINISTRY OF DEFENCE (NAVY),
NEW DELHI-110 011.
3. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS),
OFFICE OF THE PCDA(P), DRAUPADI GHAT,
ALLAHABAD, UP- 211 014.
4. THE COMMODORE, BUREAU OF SAILORS (CABS)
CHEETAH CAMP, MANKHURS,
MUMBAI-400 088.

BY ADV.SRI.K.M.JAMALUDHEEN, SENIOR PANEL COUNSEL.

O.A.No.27 OF 2012

APPLICANT:

K.M.PAREED, EX NAIK NO. 1512025, AGED 72 YEARS,
S/O LATE. K.K.MUSTHAFA, KUNDUKAD HOUSE,
KAITHARAM PO, NORTH PARAVOOR,
ERNAKULAM DIST., KERALA – 683 519..

BY ADVS. SRI. M.RAJAGOPALAN & SRI. V.K.SATHYANATHAN.

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF DEFENCE,
SOUTH BLOCK, NEW DELHI- 110 011.
2. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS),
OFFICE OF THE PCDA(P), DRAUPADI GHAT,
ALLAHABAD, UP- 211 014.
3. THE OIC RECORDS,
ARTILLERY RECORDS, NASIK ROAD CAMP- 422 102.

BY ADV.SRI.S.KRISHNAMOORTHY, SENIOR PANEL COUNSEL.

O.A.No.81 OF 2012

APPLICANT:

ARACKAL XAVIER PONNOSE, AGED 68 YEARS,
NO.13814893 EX-SEPOY, ASC(MT),
RESIDING AT ARAKAL HOUSE, NEAR MALIKAMUKKU,
KANJIRAMCHIRA WARD, ALLEPPEY DIST.,
KERALA STATE, PIN- 688 007.

BY ADV. SRI. C.R.RAMESH.

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY, MINISTRY OF DEFENCE (ARMY),
SOUTH BLOCK, NEW DELHI – 110 001.
2. THE CHIEF OF ARMY STAFF,
INTEGRATED HEAD QUARTERS
MINISTRY OF DEFENCE
SOUTH BLOCK, NEW DELHI-110 001.
3. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSION),
DRAUPADI GHAT,
ALLAHABAD, UTTARPRADESH PIN- 211 014.
4. THE OFFICER-IN-CHARGE (RECORDS),
RECORDS, ASC (SOUTH), BANGALORE -560 007.
5. THE SAINIK WELFARE OFFICER, ZILLA SAINIK WELFARE OFFICE,
ALLEPPEY DISTRICT, KERALA STATE, PIN- 688 007.

R1 TO R4 BY ADV.SMT.E.V.MOLY, CENTRAL GOVERNMENT COUNSEL.

O.A.No.87 OF 2012

APPLICANT:

NO.6821877 EX-HAV A.K.KARUNAKARAN, , AMC, AGED 70 YEARS,
RESIDING AT KADAVISSERIL PUTHANPARAMBIL HOUSE,
ERAMATHOOR PO, MANNAR, ALAPPUZHA DIST.,
KERALA STATE.

BY ADV. SRI. C.R.RAMESH.

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY, MINISTRY OF DEFENCE (ARMY),
SOUTH BLOCK, NEW DELHI – 110 001.
2. THE CHIEF OF ARMY STAFF,
INTEGRATED HEAD QUARTERS
MINISTRY OF DEFENCE
SOUTH BLOCK, NEW DELHI-110 001.
3. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSION),
DRAUPADI GHAT,
ALLAHABAD, UTTARPRADESH PIN- 211 014.
4. THE OFFICER-IN-CHARGE (RECORDS),
ARMY MEDICAL CORPS RECORDS,
PIN -900 450, C/O56 APO.
5. THE SAINIK WELFARE OFFICER, ZILLA SAINIK WELFARE OFFICE,
ALLEPPEY DISTRICT, KERALA STATE, PIN- 688 007.

R1 TO R4 BY ADV.SMT.. E.V.MOLY, CENTRAL GOVERNMENT COUNSEL.

O.A.No.167 OF 2011

APPLICANT:

EX NK VALSALAN T.P NK/136 2000, AGED 62 YEARS,
S/O A.V.KUMARAN, PEEDIKAKANDY HOUSE,
NARIPATTA. PO, KOZHIKODE.

BY ADVS. SRI. M.P.ASHOK KUMAR & P.C.GOPINATH

versus

RESPONDENTS:

1. THE SENIOR RECORDS OFFICER ,
MADRAS ENGINEER GROUP- PIN-900 493,
C/O 56 APO.
2. UNION OF INDIA, REPRESENTED BY THE
SECRETARY, MINISTRY OF DEFENCE,
PENSION GRIEVANCES CELL,
227, B/WING, SENA BHAVAN, NEW DELHI- 110 011..

3. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS(PENSION)
PCDA(P), OFFICE OF THE PCDA(P), DRAUPADI MARG.-211 014.

BY ADV.SRI.P.J.PHILIP, CENTRAL GOVERNMENT COUNSEL.

O.A.No.90 OF 2012

APPLICANTS:

1. COL. P.P.S. KUMARAN (RETD), IC 21410 K, AGED 71 YEARS,
"SREELAKAM", 49/697 S, RAJEEV NAGAR, PUTHUKALAVATTOM,
ELAMAKKARA P.O., KOCHI – 682 026, KERALA.
2. COL. R.P.GOPALAN (RETD), IC 23176 X, AGED 65 YEARS,
SHRIKRISHNA NIKETAN, NMC NO.IX/501, RAILWAY STATION ROAD,
NEYYATTINKARA – 695 121, KERALA.
3. SQN.LDR. G.R. NAIR (RETD), NO.13514 R, AGED 73 YEARS,
SHYAMA, A-40, SREECHITHRA NAGAR,
PANGODE, THIRUMALA P.O., THIRUVANANTHAPURAM – 695006,
KERALA.

BY ADV. SRI. N. MANOJ KUMAR.

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE SECRETARY
TO GOVERNMENT, MINISTRY OF DEFENCE,
DEPARTMENT OF VETERAN'S WELFARE,
SENA BHAVAN, NEW DELHI – 110 011.
2. CHIEF OF ARMY STAFF, ARMY HEADQUARTERS,
SOUTH BLOCK, NEW DELHI – 110 011.
3. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS,
DRAUPADI GHAT, ALLAHABAD – 211 014.
4. CHIEF OF AIR STAFF, AIR HEADQUARTERS,
VAYU BHAVAN, NEW DELHI – 110 011.

BY ADV. SRI. K.M. JAMALUDEEN, SR. PANEL COUNSEL.

O.A.No.122 OF 2011

APPLICANTS:

SANAL KUMAR.V.B., AGED 41 YEARS (EX.No.765495 EX.SGT
OF INDIAN AIR FORCE), S/O.LATE SHRI. BALARAMAN PILLAI,
RAJASADANAM, NEELESWARAM P.O., NEDUVATHOOR,
KOTTARAKKARA, KERALA – 691 506.

BY ADV. SRI. T.R. JAGADEESH.

Versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK, NEW DELHI – 110 011.
2. THE CHIEF OF THE AIR STAFF, AIR HEADQUARTERS (VB),
NEW DELHI – 110 011.
3. AIR FORCE RECORD OFFICE, SUBROTO PARK,
NEW DELHI - 110 010.
4. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS),
OFFICE OF THE P.C.D.A(P), DRAUPADI GHAT,
ALLAHABAD - 211 014.

BY ADV. SRI. TOJAN J. VATHIKULAM, CENTRAL GOVT. COUNSEL.

ORDER

Shri Kant Tripathi, Member (J):

1. By these Original Applications filed under Section 14 of the Armed Forces Tribunal Act, the applicants have claimed the benefit of broad banding (rounding off) of disability pension according to the terms and conditions provided in para 7.2 of 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).

2. In view of the fact that in all the Original Applications, a common question of law and fact is involved, they were heard together with the consent of the learned counsel for the parties and are being disposed of by this common order. O.A.No.120 of 2011 has been made the leading case. After reserving the order in the present matters, O.A.No.90 of 2012 and 122 of 2011 were also heard on merit with the observation that the order in the said two O.A. will also be rendered along with the present matter, therefore, O A Nos.90 of 2012 and 122 of 2011 are also being disposed of by this common order.

3. We have heard Mr.V.K.Sathyanathan, Mr.C.R.Ramesh, Mr.P.K.Madhusoodanan, Mr.M.P.AsokKumar, Mr.N.Manoj Kumar, Mr.T.R.Jagadeesh for the applicants, and Mr.K.M.Jamaludeen, Mr.Tojan J.Vathikulam, and Mrs.E.V.Moly, for the respondents and perused the record.

4. The relevant facts may be stated as follows:

(i) OA No.120 of 2011 has been filed by the applicant, Raman Raveendran, No.1352228A, Ex.Naik, with the allegation that he was enrolled in the Indian Army, Madras

Engineering Corps, on 30th July 1970 and was discharged due to medical disability on 31.7.1985 under Army Rule 13(3)III (i) on fulfilling his conditions of enrolment. The Medical Board found his disability, (Bronchial Asthma), at 30%. Accordingly in due course, he was sanctioned disability pension with effect from 1.8.1985 vide PPO No.D/448/86. It was not disputed by the counsel for the parties that the applicant is still being paid the disability pension at the rate of 30% disability. Therefore, we do not propose to discuss the previous litigation pertaining to the applicant especially when in the present matter only the question of rounding off of disability pension is involved.

(ii) In OA No.11 of 2012, it is alleged that the applicant, Ex.SEA 1, No.053559, N.Sadanandan, was enrolled in the Indian Navy on 21st October 1967 and was discharged on 31.10.1977 on completion of the initial engagement of 10 years. The applicant was examined by a Release Medical Board which found him suffering from Bronchitis with 20% disability aggravated by the service. Consequently he was sanctioned disability pension. Even the Re-Survey Medical Board assessed the same disability and as such even today 20% disability

pension is being paid to him without any objection.

(iii) In O A No.81 of 2012, the applicant, Arackal Xavier Ponnose, Ex Sepoy No. 13814893, was enrolled in the Indian Army on 8.3.1963 and was discharged from service with effect from 31.8.1978 under Army Rule 13(3)III (i) on fulfilling the conditions of his enrolment. Accordingly he was granted service pension with effect from 1.9.1978. In view of the fact that the applicant was in a low medical category at the time of his discharge, he was examined by a Release Medical Board which opined that he was suffering from the disability "Head Injury Clavicle Scaphoid LT", attributable to military service. The Release Medical Board assessed the said disability at 30%. In due course the applicant was sanctioned disability pension and as such he is in receipt of disability pension at the rate of 30%.

(iv) In O A No.87 of 2012, the applicant, Ex Havildar A.K. Karunakaran, No. 6821877, was enrolled in the Army on 12.6.1963 and was discharged from service on 1.7.1985 on fulfilling the terms of engagement as per Rule 13(3)III (i) of the Army Rule. At the time of discharge, he was found

suffering from Bronchial Asthma by the Medical Board which assessed the disability at 20% and held that the same had been aggravated by the military service. Accordingly, the applicant was granted disability pension vide PPO No.D/689/1987 dated 10.2.1987. The Re Survey Medical Board held at INHS Sanjivani on 13.1.2006 found the disability continuing at the same rate. In this view of the matter, the applicant is still in receipt of disability pension.

(v) In O A No.4 of 2012, the applicant, Ex Havildar C.G.Varghese, No.13682224 F, was enrolled in the Indian Army on 17.3.1981. On completion of his basic military training, he was posted at 6 GUARDS. He sustained an injury in a mine blast during Operation Pawan in Sri Lanka on 22.10.1987. So, he was placed in low medical category, CEE (Temporary). He was however, discharged from service under Army Rule 13(3)III (i) on fulfilling his conditions of terms of engagement on 31.3.2003 and was struck off of the strength with effect from 1.4.2003. In view of the fact that the applicant had rendered 20 years and 16 days service, he was sanctioned service pension. He was also granted Honorary rank of

Havildar with effect from 15.10.2002. The Release Medical Board held at Military Hospital Nazirabad on 28.10.2002 diagnosed "the mine blast injury, LT Fore Arm Fracture Compound Communicated Radius and Ulna (Lt)" as attributable to military service, which was assessed at 40% for life. Accordingly, the applicant was sanctioned war injury pension for 40% disability for life., vide PPO No.D/BC/481/2003. Accordingly, he is being continuously paid War Injury Pension at the rate of 40%.

(vi) In OA No.27 of 2012, the applicant, K.M.Pareed, Ex Naik No.1512925, was enrolled in the Indian Army on 24.10.1962 and was discharged therefrom on 1.11.1982 on fulfilling the conditions of engagement as per Rule 13(3) III (i) of the Army Rule. At the time of discharge, the applicant was in Low Medical Category, CEE (Physical) (Permanent), so he was examined by a Release Medical Board held at 167 Military Hospital, on 24th August 1982, which opined that the applicant's disability, Chronic Duodenal Ulcer (Optd) (563) was aggravated by military service, which was assessed at 30% for two years. Accordingly, the applicant was sanctioned disability element of pension in addition to the service element.

The applicant's disability was re-assessed by the Re-Survey Medical Board which down graded the disability to the extent of 20% for life. In this view of the matter, the applicant is still in receipt of disability pension at the rate of 20% for life.

(vii) In O A No.167 of 2012, the applicant, Nk. Valsalan T.P., No.1362000 X, was enrolled in the Indian Army as a recruit on 19.2.1975 and was attested as a trained soldier on 13.3.1976. After rendering 21 years one month's service, he was granted extension of service from 28.2.1995 to 28.2.1997 subject to the condition that he shall continue in Medical Category AYE/LMC (Temporary) and shall also earn ACR grading not less than average. During the extended period of service, the applicant was downgraded to low medical category, BEE (Permanent) with effect from 23rd August 1995. He was, accordingly, discharged from the Army with effect from 1.4.1996, therefore, his extended tenure of service stood reduced. Before the discharge, the applicant was examined by a Release Medical Board at Military Hospital, Jodhpur on 27.11.1995, which found him suffering from Primary Hyper Tension (401). The said disability was assessed at 20% initially for two years. Accordingly, the applicant was sanctioned

disability pension. The Re-Survey Medical Board examined the applicant on 18.09.2000 at INHS Sanjivani, Kochi, which found the disability at 30% with effect from 2.11.2000 for five years. His request for sanction of disability pension at the rate of 30% disability was examined by the P.C.D.A. (P), Allahabad, which got the matter examined by a specialist doctor, who opined that the disability was aggravated by the military service, which was to the extent of 20% for five years. Accordingly, the disability pension of the applicant was extended upto September 2005. The applicant was again brought before a Re-Survey Medical Board on 1.9.2004 at INHS Sanjivani, Kochi, which again recommended the disability at 20% with effect from 1.9.2004 for life. The P.C.D.A.(P) Allahabad accordingly sanctioned disability pension for 20% disability for life to the applicant with effect from 1.9.2004, which is still being drawn by him.

(viii) O A No.90 of 2012 has been filed by three applicants.

(a) Applicant No.1, Col.P.P.S.Kumaran had suffered serious injury to his ears due to frequent exposure to live fire of guns, which resulted in causing "Bilateral high tone hearing

loss", which was regarded as aggravated by the military service by the Release Medical Board. His disability was assessed at 20%. He retired from service on 31.1.1993 on attaining the age of superannuation;

(b) The applicant No.2, Col. R.P.Gopalan, retired from service on 31.10.2000 on attaining the age of superannuation. At that time, he had 40% disability attributable to war injury and was accordingly sanctioned war injury element of pension for life;

(c) The applicant No.3, Sqn.Leader G.R.Nair retired from service on 30.11.1999 after rendering 32 years of service. He had sustained the disability, Compound comminuted fracture both bones left leg at the rate of 30%, resulting in shortening of left leg by 2 cms due to overlapping of bones. He had another disability, rupture spleen at the rate of 20%. He was accordingly sanctioned disability pension for life.

(ix) In O A No.122 of 2011, the applicant, Ex.Sergeant Sanal Kumar C.B, No.765495, sustained injury while repairing IL 76 Air Craft as he fell down from a seven step ladder. He was placed in low medical category (permanent) as his right arm had partially incapacitated. The applicant was discharged

on 21.3.2006 on compassionate grounds on own request. At the time of discharge, he had rendered 15 years and 8 months service. The applicant was denied the disability pension on the ground that he was discharged on own request, which was challenged before the Hon'ble High Court and as per the direction of the High Court in W.P.(C) No.6206 of 2008, the respondents granted disability pension for the 20% disability from the date of discharge vide PPO No.08/14/B/0197/2009 dated 19.5.2009. The applicant requested the respondents to grant the benefit of rounding off vide Annexure A3, but the third respondent rejected the request stating that rounding off of disability element of disability pension was applicable only for those who were discharged from service solely on medical grounds.

5. All the aforesaid applicants have claimed the benefit of broad banding (rounding off) as provided in Para 7.2 of the Government Letter dated 31st January 2001, on the ground that the percentage of disability of each of the applicants which was 20% or more but less than 50%, therefore the same was liable to be rounded off to 50%.

6. The respondents have contested all the aforesaid cases mainly on the ground that the benefit of rounding off of disability pension is admissible to only those armed forces personnel whose tenure of service got cut due to invalidment on account of the disability or war injury. The next stand of the respondents is that the tenure of none of the applicants was cut due to the invalidment on account of a disability or war injury, as the case may be, as none of the applicants was invalided out of service prematurely. All of them were allowed to serve till the expiry of their tenure. In such matters, para 7.2 of the Government Letter dated 31st January 2001 is not attracted. Their cases are governed by para 8 of the said Government letter. To put it otherwise, according to the learned counsel for the respondents, para 7.2 of Government Letter dated 31st January 2001 is attracted in a case where the pensioner was invalided out of service, which resulted in reducing his tenure, whereas para 8 of the Government Letter applies in a case where the Armed Forces personnel has a disability to the extent of 20% or more, but was not invalided out of service and was allowed to serve till the last date of his tenure.

7. Before we proceed to examine the rival cases on merit, we consider it just and expedient to refer to the relevant Government letters/orders on the subject. The O.M. No. 45/22/97-P&PW(C) dated 3rd February 2000 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioner's Welfare has, inter alia, provided for the broad banding (rounding off) of disability pension in para 5(i), which may be reproduced as follows.

“5. The Fifth Central Pay Commission also suggested certain procedural changes. These have also been considered by the Government. The President is pleased to decide as under:-

(i) The extent of disability or functional incapacity shall be determined in the following manner for the purpose of computing the disability element forming part of benefits:-

<i>Percentage of disability assessed by medical board</i>	<i>Percentage to be reckoned for computation of disability</i>
Less than 50	50
Between 50 and 75	75
Between 75 and 100	100.”

9. Apart from the aforesaid O.M. dated 3rd February 2000, the Government Letter dated 31.01.2001 dealing with broad banding (rounding off) of disability pension/war injury pension and other relevant matters pertaining to armed forces personnel, is also being relied upon by the parties.

Therefore, we consider it just and expedient to examine the true import of the letter dated 31.01.2001 also.

10. Para 4.1 of the Government Letter dated 31.1.2001 has broadly categorised cases relating to death or disability taking place under different circumstances, in the following five categories, namely:

“Category A

Death or disability due to natural causes neither attributable to nor aggravated by military service as determined by the competent medical authorities. Examples would be ailments of nature of constitutional diseases as assessed by medical authorities, chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.

Category B

Death or disability due to causes which are accepted as attributable to or aggravated by military service as determined by the competent medical authorities. Diseases contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

Category C

Death or disability due to accidents in the performance of duties such as :-

- (i) Accidents while traveling on duty in Government Vehicles or public/private transport.
- (ii) Accidents during air journeys
- (iii) Mishaps at sea while on duty.
- (iv) Electrocution while on duty, etc.
- (v) Accidents during participation in organised sports events/adventure activities/ expeditions/training.

Category D

Death or disability due to acts of violence/attack by terrorists, anti social elements, etc whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc. would be covered under this category, besides death/disability occurring while employed in the aid of civil power in dealing with natural calamities.

Category E

Death or disability arising as a result of :-

- (a) enemy action in international war.
- (b) action during deployment with a peace keeping mission abroad.
- (c) border skirmishes.
- (d) during laying or clearance of mines including enemy mines as also minesweeping operation.
- (e) on account of accidental explosions of mines while laying operationally oriented mine-field or lifting or negotiating minefield laid by enemy or own forces in operational areas near international borders or the line of control.
- (f) War like situations, including cases which are attributable to/aggravated by :-
 - (i) extremist acts, exploding mines etc. while on way to on way to an operational area.
 - (ii) battle inoculation training exercises or demonstration with live ammunition.
 - (iii) kidnapping by extremists while on operational duty.
- (g) An act of violence/attack by extremists, anti-social elements, etc.
- (h) Action against extremists, antisocial elements, etc. Death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.
- (i) Operations specially notified by the Govt. from time to time. “

The cases pertaining to death/disability referred to Category 'A' aforesaid are neither attributable to nor aggravated by the military service. With regard to such matters, para 4.2 of the

Government Letter dated 31.01.2001 specifically provides that the cases covered under Category A would be dealt with in accordance with the provisions contained in Ministry of Defence Letter No.1(6)/98/D (Pen/Services) dated 3.2.1998. Para 4.2 further provides that the cases falling under Category 'B' to 'E' above will be dealt with under the provisions of the letter dated 31.01.2001.

11. It is also significant to mention that according to Note (1) appended to Para 4.2, the illustrations given in each category are not exhaustive. Cases not covered under the aforesaid categories will be dealt with as per the Entitlement Rules to Casualty Pensionary Awards in vogue. There are Notes (2), (3) and (4) also after Note (1), but they do not appear to be relevant in the present matter, therefore, we do not consider it necessary to refer to the said three notes.

12. Para 7 of the Government Letter dated 31.01.2001 deals with disability pension matters on invalidment. It has two parts; first part has been incorporated in para 7.1 with regard to service element of pension and disability element of

the pension with regard to Armed Forces personnel invalided out of service under circumstances mentioned in the aforesaid Categories 'B' and 'C' of para 4.1. Para 7.1 may be reproduced as follows:

7.1 Where an Armed Forces Personnel is invalided out of service under circumstances mentioned in category 'B' & 'C' of Para 4.1 above which is accepted as attributable to or aggravated by Military Service, he/she shall be entitled to disability pension consisting of service element and disability element as follows:-

(i) Service Element: -

(i) **Commissioned Officers:** The amount of service element shall be equal to the retiring pension determined as per Para 6.1(c) of this Ministry's letter No. 1(6)/98/D(Pen/Ser) dated 03 Feb 98. For this purpose the reckonable qualifying service shall mean the actual service rendered by the officer plus the full weightage appropriate to the rank held at the time of invalidment (except in the case of TA officers) as given in Para 5(b) of the Ministry's above said letter dated 03 Feb 98. There shall be no condition of minimum qualifying service having been actually rendered for earning this element, if otherwise due.

(ii) **PBOR:** Service element will be determined as follows: -

Length of actual qualifying service rendered (without weightage)	Entitlement of Service Element
15 years or more (20 years or more in the case of Ncs (E))	Equal to normal service pension relevant to the length of qualifying service actually rendered plus weightage of service as given in Para 5 and 6 of Ministry's letter dated 03 Feb 98 ibid
Less than 15 years (20 years or more in the case of Ncs (E))	Equal to service pension as determined as per Para 6.2 (b) of Ministry's letter dated 03 Feb 1998 but it shall in no case be less than 2/3 rd of the minimum service pension admissible to the rank/pay group.

Note: The existing provisions in the case of PBOR regarding grant of service element equal to minimum service pension appropriate to the rank and pay group in case where service is less than 15 years (20 years in the case of NCs(E)) and the disability is sustained in flying/Parachute jumping duty or while being carried on duty in an aircraft under proper authority shall continue.

(ii) (a) **Disability Element: -** The rates of Disability element

for 100% disability for various ranks shall be as follows:-

Rank	Amount
i) Commissioned Officers and Honorary Commissioned Officers of the three services, MNS, TA and DSC	Rs.2600/-
ii) Junior Commissioned Officers and equivalent ranks of the three services, TA and DSC	Rs.1900/-
iii) Other ranks of the three services, TA and DSC	Rs.1550/-

(b) Disability lower than 100% shall be reduced with reference to percentages as laid down in Para 7.2 below. Provided that where permanent disability is not less than 60%, the disability pension (i.e. total of service element plus disability element) shall not be less than 60% of the reckonable emoluments last drawn.”.

13. The second part of Para 7 has been incorporated in Para 7.2 of the Government Letter dated 31.1.2001, which provides for rounding of the disability pension. Para 7.2 being relevant in the present matter, is being reproduced as follows:

“7.2 Where an Armed Forces 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

14. Para 8 of the Government letter dated 31.1.2001

deals with the matter of disability element of pension on retirement/discharge. This paragraph has three parts. Para 8.1 of the Government letter provides at which rate disability element of pension is to be paid to an Armed Forces personnel who is not prematurely discharged but retained in service despite the disability arising under circumstances mentioned in Category 'B' and 'C' but is subsequently retired/discharged on attaining the age of retirement or completion of tenure. In such matters, the disability element of pension is payable at the rates prescribed in para 7.1 (ii)(a) for 100% disability. For disabilities less than 100% but not less than 20%, the disability element of pension is required to be proportionately reduced as provided in para 8.2 of the Government Letter. Para 8.2 further provides that the provisions contained in para 7.2 shall not be applicable for computing disability element. It is also provided that disability actually assessed by the duly approved Release Medical Board/Invaliding Medical Board as accepted by the Pension Sanctioning Authority shall reckon for disability element. Para 8.1, 8.2 and 8.3 of the Government Letter dated 31.1.2001 are being reproduced as follows:

"8.1 Where an Armed Forces Personnel is retained in service despite disability arising/sustained under the circumstances mentioned under category 'B' & 'C' in Para 4.1 above and is subsequently retired/discharged on attaining age of retirement or on completion of tenure, he/she shall be entitled to disability element at the rates prescribed at Para 7.1.ii (a) above for 100% disablement.

8.2 For disabilities less than 100% but not less than 20% the above rates shall be proportionately reduced. No disability element shall be payable for disabilities less than 20%. Provisions contained in Para 7.2 above shall not be applicable for computing disability element. Disability actually assessed by the duly approved Release Medical Board/Invaliding Medical Board as accepted by the Pension Sanctioning Authority, shall reckon for computing disability element.

8.3 Retiring/Service pension or Retiring Service Gratuity as admissible as per Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 03 Feb 93 shall be payable in addition to disability element from the date of retirement/discharge.

Note: *An Armed Forces Personnel who retires voluntarily/or seek discharge on request shall not be eligible for any award on account of disability. Provided that Armed Forces Personnel who is due for retirement/discharge on completion of tenure, or on completion of service limits or on completion of the terms of engagement or on attaining the prescribed age of retirement, and who seeks pre-mature retirement/discharge on request for the purpose of getting higher commutation value of pension shall remain eligible for disability element."*

15. It is thus clear that as per para 8.2 of the Government Letter, the benefit of broad banding (rounding off) of the pension, is not available to Armed Forces personnel who are not discharged prematurely despite the disability arising/sustained under circumstances mentioned in Category 'B' and 'C' of para 4.1 of the Government Letter dated 31.1.2001 and are

allowed to complete their normal tenure and are retired/discharged on attaining the age of retirement or completion of tenure. In such matters, the disability element of the pension is payable at the rates prescribed in para 7.1(ii)(a) for 100% disablement. For the disability less than 100% but not less than 20%, the disability element of pension is proportionately reduced. In such matters, the broad banding (rounding off) of the pension has been expressly prohibited.

16. Para 9 of the Government Letter dated 31.01.2001 deals with lumpsum compensation in lieu of disability element with regard to a disability sustained under circumstances mentioned in Category 'B' and 'C' of para 4.1 of the Government Letter which is assessed at 20% or more for life. In that matter, if the Armed Forces personnel is retained in service despite the disability, he/she shall be paid compensation in lumpsum in lieu of disability element equal to capitalised value of disability element on the basis of the disability actually sustained without granting any benefit of

broad banding as provided in para 7.2. The rates of disability element for calculating the capitalised value shall be as laid down in para 7.1 (ii) (a) and this rate is required to be proportionately reduced for lesser percentage of disability. It is also significant to state that by para 9.1 it has been provided that, once the lumpsum compensation has been paid in lieu of disability element, there shall be no further entitlement to the disability element for the same disability under the provisions of para 8 of the Government Letter. Such disability shall also not qualify for any pensionary benefit or relief subsequently.

In this way, as per para 9.1, lumpsum compensation is payable to an individual retained in service despite such disability, in lieu of disability element of pension as per para 8 of the Government letter. Therefore, in case lumpsum compensation in lieu of disability element is paid, the individual will not be entitled for disability element of pension for the same disability and it will also not qualify for any pensionary benefit or relief subsequently. Para 9.1 being relevant, may be re-produced as follows:

“9.1 In case a person belonging to the Armed Forces is found to have a disability which is sustained under the circumstances mentioned under category “B” & “C” in Para 4.1 above which is assessed at 20% or more for life but the individual is retained in service despite such disability, he/she shall be paid a compensation in lump sum (in lieu of disability element) equal to the capitalised value of disability element on the basis of disability actually assessed (i.e. provisions of Para 7.2 above shall not apply). The rates of disability element for calculating capitalized value shall be as laid down in Para 7.1 (II)(a). The above rates shall be proportionately reduced for lesser percentage of disability. The age next birthday will be reckoned with reference to the date of onset of disability with loading of age, if any, recommended by the Disability Compensation Medical Board. Once a compensation has been paid in lieu of the disability element, there shall be no further entitlement to the disability element for the same disability under the provisions of Para 8 above. Such disability shall also not qualify for grant of any pensionary benefits or relief subsequently.”.

17. Para 10 of the Government Letter dated 31.1.2001 deals with the matter of War Injury Pension on invalidment. Para 10.1 deals with war injury pension consisting of service element and war injury element with regard to Armed Forces personnel invalided out of service on account of disabilities sustained under circumstances mentioned in Category E. Para 10.2 of the Government letter has, inter alia, provided for application of the benefit of rounding off of the pension as per para 7.2 of the Government letter to individuals invalided out

under circumstances mentioned in Category 'D' and 'E' of para 4.1 of the Government letter. To put it otherwise, in such matters, the benefit of rounding off according to para 7.2 is available to the individual. The provisions of para 10.1, 10.2 and 10.3 being relevant may be re-produced as follows:

“10.1 Where an Armed Forces Personnel is invalided out of service on account of disabilities sustained under circumstances mentioned in category ‘E’ of Para 4.1 above, he/she shall be entitled to War Injury Pension consisting of Service element and War Injury element as follows:-

*(a) **Service Element:** Equal to Retiring/Service Pension to which he/she would have been entitled on the basis of his/her pay on the date of invalidment but counting service upto the date on which he/she would have retired in that rank in normal course including weightage as admissible. Provisions of Para 6 of Ministry of Defence letter No. 1(6)/98/D(Pen/Ser) dated 3.2.98 shall apply of calculating Retiring/Service Pension. There shall be no condition of minimum qualifying service for earning this element.*

*(b) **War Injury Element:** Equal to reckonable emoluments last drawn for 100% disablement. However, in no case the aggregate of Service Element and War Injury element should exceed last pay drawn. For lower percentage of disablement, War Injury element shall be proportionately reduced.*

10.2 Provisions contained in Para 7.2 shall equally apply to individuals invalided out under the circumstances mentioned in category ‘D’ and ‘E’ of Para 4.1 above for calculating War Injury element of War Injury Pension.

10.3 Retirement gratuity admissible on invalidment due to war injury shall be calculated on the basis of reckonable emoluments on the date of invalidment but counting service upto the date on which he/she would have normally retired in that rank plus weightage as applicable (total not

exceeding 33 years). Other provisions of Retirement Gratuity contained in Para 12.1 of Min. of Def. Letter No. 1(6)/98/D(Pen/Ser) dated 03 Feb 98 shall equally apply.”.

18. Para 11 of the Government Letter deals with cases of War Injury Pension on retention in service. Para 11 has been further categorised into six sub paragraphs. Para 11.1 deals with cases of War Injury Pension on retention in service despite the disability due to war injury sustained under circumstances mentioned in Category 'E' of para 4.1 above. Para 11.2 deals with cases relating to lumpsum compensation in lieu of war injury pension. Para 11.3 provides for the date of commencement of the benefit granted by para 11.1 of the Government Letter. Para 11.4 deals with cases of war injury element on a monthly basis at the rates prescribed under para 11.2 in the event the individual does not opt for lumpsum compensation in lieu of war injury element. Para 11.5 seems to be at par with para 8.2, which clearly prohibits application of rounding off of the pension benefit as provided in para 7.2. Para 11.6 pertains to the retiring/service pension and gratuity. Para 11.1 to 11.6 are being re-produced as follows:

“11. War Injury Pension on Retention in Service

11.1 Armed Forces personnel who are retained in service despite the disability due to war injury sustained under circumstances mentioned in Category 'E' of Para 4.1 above, and retire subsequently will have an option as follows to be exercised within a period as prescribed by the Government from time to time:-

- (a) to draw lump sum compensation in lieu of War Injury element foregoing war injury element at the time of subsequent retirement/discharge, or
- (b) to draw war injury element at the time of retirement in addition to retiring/service pension admissible on retirement/discharge foregoing lump sum compensation.

11.2 Lump sum Compensation in lieu of War Injury Pension

In case an Armed Forces Personnel is found to have a disability which is sustained under the circumstances mentioned in category 'E' in Para 4.1 above which is assessed at 20% or more for life but the individual is retained in service despite such disability and opts for lump sum compensation, he shall be paid the lump sum compensation in lieu of war injury element. The rates for calculation of lump sum compensation in lieu of war injury element for 100% disability for life will be as under:-

Rank	Amount
i) Commissioned Officers and Honorary Commissioned Officers of the three services, MNS, TA and DSC	Rs.5200/-
ii) JCOs and equivalent ranks of the Air Force, Navy, TA and DSC	Rs.3800/-
iii) Other ranks /NCs (E) and equivalent rank of Air Force, Navy, TA and DSC .	Rs.3100/-

For disability due to war injury of less than 100% the rates shall be proportionately reduced. The one time compensation in lump sum in lieu of War Injury element will be equal to the capitalized value of War Injury element which shall be calculated in accordance with Regulation 344 of the Pension Regulations for the Army (and similar corresponding provisions in the Pension Regulations for the Air Force and the Navy) and will be equal to the capitalized value of war injury element for the actual percentage of the disability at the appropriate rate mentioned in Para 11.2 above. For this purpose, the rank shall be the rank held at the time of injury sustained by the individual due to war. Age next birthday will be reckoned with reference to the date of onset of disability with loading to age if any, recommended by

the competent Medical Board.

Compensation in lieu of war injury element will be payable provided the degree of disablement is equal to or more than 20%. Once the compensation in lieu of war injury element due to disability for life has been paid, there shall be no further entitlement on account of such a disability at the time of retirement/discharge from the Armed Forces. Since this is one time payment on account of compensation, no restoration will be permitted.

11.3 The provision contained in Para 11.2 above shall be applicable to casualties occurring on or after 01 Jan 96.

11.4 War Injury Element on subsequent retirement: Where an Armed Forces personnel is retained in service despite injury/disability sustained under the circumstances mentioned in category 'E' of Para 4.1 above and does not opt for lump sum compensation in lieu of war injury, he/she shall be entitled to the payment of war injury element on a monthly basis at the rates prescribed under Para 11.2 above on subsequent retirement/discharge or on completion of the term of engagement.

11.5 For disabilities less than 100% but not less than 20%, the above rates shall be proportionately reduced. No war injury element shall be payable for disabilities less than 20%. Provisions contained in Para 7.2 above shall not be applicable for computing war injury element. Disability actually assessed by the duly approved Release Medical Board/invaliding Medical Board shall reckon for computing war injury element.

11.6 Retiring/Service Pension or Retiring/Service Gratuity as admissible as per Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 03 Feb 98 shall be payable in addition to war injury element from the date of retirement/discharge.

Note: *An Armed Forces Personnel who retires voluntarily/or seek discharge on request shall not be eligible for any award on account of disability. Provided that Armed Forces Personnel who is due for retirement/discharge on completion of tenure, or on completion of service limits or on completion of the terms of engagement or on attaining the prescribed age of retirement, and who seeks pre-mature retirement/discharge on request for the purpose of getting higher commutation value of pension, shall remain eligible for disability element."*

18A. Before we proceed to refer to other relevant paragraphs of the Government Letter dated 31.1.2001, we consider it just and expedient to record that the Government of India, Ministry of Defence, Department of Exservicemen

Welfare vide letter dated 29.9.2009 has made ineffective the Note appended to Para 8 and Para 11 of the Government Letter dated 31.1.2001 with effect from 1.1.2006. Consequently, the disability element/war injury element of pension is also payable to Armed Forces personnel who retire voluntarily or seek discharge on own request with effect from 1.1.2006. Therefore, the aforesaid Note to para 8 and para 11 have lost their relevance with effect from the said date. The relevant portion of the Government Letter dated 29.09.2009 is reproduced as follows:

"The undersigned is directed to refer to Note below Para 8 and Para 11 of this Ministry's letter no.1(2)/97/D(Pen-C) dated 31.01.2001, wherein it has been provided that Armed Forces personnel who retire voluntarily or seek discharge on request shall not be eligible to any award on account of disability.

2. In pursuance of Government decision on the recommendation of the Sixth Central Pay commission vide para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by military service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntary or otherwise in addition to retiring/service pension or retiring/service gratuity.

3. The provisions of this letter shall apply to the Armed Forces personnel who are retired/discharged from service on or after 1.1.2006.

4. xxx xxx xxx
5. xxx xxx xxx
6. xxx xxx xxx"

19. Para 12 of the Government Letter dated 31.1.2001 is also relevant, which deals with cases of Armed Forces personnel, sustaining disability under the circumstances mentioned in Category D of Para 4.1 of the said Government Letter, whereby they have been made entitled to the same pensionary benefits as are admissible to war injury cases on invalidment/retirement/discharge including lump sum compensation in lieu of disability as mentioned in para 10 and 11 of the aforesaid letter. However, on invalidment, they are entitled to disability element instead of war injury element in addition to service element. The note appended to para 12 further provides that the Armed Forces personnel sustaining disability mentioned in Category D of para 4.1 shall not be treated as war disabled. So, they are not entitled to any special concession/dispensation otherwise entitled to war disabled. Para 12 of the Government letter dated 31.01.2001 is reproduced as follows:

"12. Liberalised Disability Pension in respect of Armed Forces Personnel sustaining disability under the circumstances mentioned in Category 'D' of Para 4.1 above.

Armed Forces Personnel sustaining disability under the circumstances mentioned in category 'D' of Para 4.1 above shall be entitled to same pensionary benefits as admissible to war injury cases on invalidment/retirement/discharge including lump sum compensation in lieu of disability as mentioned in Paras 10 and 11 above. However, on invalidment they shall be entitled to disability

element instead of war injury element in addition to service element. The service element will be equal to retiring/service pension to which he/she would have been entitled on the basis of his/her pay on the date of invalidment but counting service upto that date on which he would have retired in that rank in the normal course including weightage as admissible. Provisions of Para 6 of Ministry of Defence letter No. 1(6)/98/D(Pen/Services) dated 3.2.98 shall apply for calculating retiring/service pension. There shall be no condition of minimum qualifying service for earning this element. This disability element would be admissible as laid down in Para 7.1(II)(a) above. For lower percentage of disablement, this amount shall be proportionately reduced. However, in no case aggregate of service element and disability element shall be less than 80% of reckonable emoluments last drawn.

Note: *Armed Forces personnel sustaining disability under the circumstances mentioned in Category 'D' of Para 4.1 above shall not be treated as War Disabled. Hence they will not be entitled to any special concession/dispensation otherwise available to war disabled."*

20. It is thus clear that Government letter dated 31.01.2001 has not only classified various disabilities in five categories, namely, Category 'A','B', 'C', 'D' and 'E' in para 4.1 of the aforesaid Government Letter but has also made relevant provisions in Part IV (para 7 to 13) of the Government Letter as to how the disability/war injury pensionary awards have to be sanctioned with regard to disabilities described in Categories 'B', 'C', 'D' and 'E'. The disabilities specified in Category A have to be dealt with separately in accordance with Letter dated 3.2.1998 referred to in para 4.2 of the Government Letter dated 31.1.2001. Note 1 appended to the said Para 4.2 further clarifies that illustrations given in each of the above

Categories 'A', 'B', 'C', 'D' and 'E' are not exhaustive and the cases not covered by any of these categories have been directed to be dealt with as per the Entitlement Rules of Casualty Pensionary Awards, which is in vogue. Therefore, excluding the categories covered by para 4.2 and Note 1 appended thereto of the Government Letter dated 31.1.2001, the remaining other matters pertaining to the disabilities referred to in Categories 'B', 'C', 'D' and 'E' have to be dealt with according to Government Letter dated 31.10.2001.

21. The Government Letter dated 31.1.2001 has broadly categorised the individuals who claim the disability/war injury pension, in three categories. The first category comprises of persons who are invalided out of the service, the second category comprises of the persons who are retained in service despite the disability either arisen or sustained under the circumstances mentioned in any of the Categories 'B', 'C', 'D' and 'E' and are subsequently retired/discharged on attaining the age of retirement or completion of tenure, and the third category comprises of the Armed Forces personnel who seek premature discharge or retirement. But in view of the

Government Letter dated 29.9.2009, the third category no more survives on the commencement of the said letter and in their matter, the disability element/war injury element of pension is payable.

22. The aforesaid Government Letter dated 31.1.2001 has also categorised the percentage of disability/war injury cases. For 100% disability, the rates of disability element and service element of pension or war injury element and service element of pension have been prescribed, therefore, the first category is of the persons who sustained 100% disability/war injury attributable to or aggravated by the service. The Government Letter further provides as to how the disability 20% or more but less than 100% have to be taken into account for sanctioning disability/war injury pension. Therefore, the second category is of the persons who sustained disability/war injury attributable to or aggravated by service, with the percentage of disability less than 100% but at least 20% or more.

23. Para 7.2 of the Government Letter dated 31.1.2001 pertains to rounding off of the disability pension regarding the

disabilities specified in Categories B and C of para 4.1 of the Government Letter. Para 10.2 of the Government Letter deals with rounding off of war injury element of war injury pension regarding the disabilities described in Categories D and E and according to this Para 10.2, the provisions contained in Para 7.2 shall equally apply to individuals invalided out under the circumstances mentioned in Categories D and E of para 4.1. What is, therefore, relevant is para 7.2 of the Government Letter, which provides for rounding off of the disability element to the extent of 50%, if the disability is 20% or more but less than 50%, to the extent of 75% if the disability is between 50% and 75%, and lastly to the extent of 100%, if the disability is between 75% and 100%. This provision of rounding off is applicable to the cases of not only disability pension but also to the cases of war injury pension, provided the disability/war injury is attributable to or aggravated by the military service. Para 7.2 of the Government Letter extends the benefit of rounding off to only those who are invalided out under the circumstances mentioned in para 4.1 of the Government Letter.

24. For those who sustain a disability/war injury

attributable to or aggravated by the Military service as described in the aforesaid Categories 'B', 'C', 'D' and 'E', and are retained in service despite the disability till the date of retirement or completion of tenure, as the case may be, separate provisions have been made in para 8.1, 8.2, 11.4 and 11.5. A perusal of these paragraphs clearly reveal that the benefit of rounding off of the disability/war injury pension is not applicable in such matters.

25. Learned counsel for the applicants submitted that para 7.2 read with para 10.2 of the Government Letter dated 31.1.2001 has extended the benefit of broad banding (rounding off) of the disability/war injury pension to an Armed Forces personnel who is invalided out under the circumstances mentioned in para 4.1 (for disabilities described in Categories 'B', 'C', 'D' and 'E'). They next submitted that, the Armed Forces personnel who served up to the age of retirement or till the completion of the entire tenure and were not prematurely discharged and had a low medical category at the time of discharge than that in which they had been recruited are also treated as invalided out of service as per the provisions of the Entitlement Rules para 4 (Para 1 of Entitlement Rules 1948),

therefore, such persons are also entitled to the benefit of rounding off as provided by para 7.2/10.2 of the Government Letter dated 31.1.2001. In this connection, the learned counsel for the applicants placed reliance on the decision of the Apex Court in ***K.J.S.Buttar vs. Union of India***, (JT 2011 (3) SC 626), which has allowed the benefit to all, whether retired on completion of tenure or prematurely retired on account of the disability. According to the learned counsel for the applicants, the decision rendered in ***K.J.S.Buttar*** (supra) was based on the Government Letter dated 31st January 2001, in which the expression "invalidment from service" was interpreted. The Apex Court, 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. According to the learned counsel for the applicants, if a person is released in a low medical category, with 20% or more disability attributable to or aggravated by military service, than the medical category in which he had been recruited, he shall be deemed to have been invalided out of service. Once it is found that a person is invalided out of

service, his claim for the rounding off of the disability pension could not be denied on the ground that his tenure of service did not get cut due to the invalidment. The learned counsel for the applicants placed reliance also on the decision of the Delhi High Court in ***Mahavir Singh Narwal vs. Union of India*** [2004 (74) DRJ 661]. The Division Bench of the Delhi High Court examined the extent and scope of Regulation 173 of the Regulations as also rules 1 and 2 of the Entitlement Rules for Casualty Pensionary Awards, 1948 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.

26. On the basis of the aforesaid decisions, learned counsel for the applicants submitted that if an individual, at the time of his release, was in a low medical category than the medical category he had been placed at the time of his

recruitment, it is to be treated that the individual was invalided out of service. Invalidment from the service cannot be inferred only when the individual is discharged by the authorities due to a disability. What is material in such matters, is to see as to what was the medical category of the person at the time of his entry and also at the time of his discharge. If the medical category which was at the time of the recruitment, is found downgraded at the time of the discharge, it is to be treated that the person was invalidated from the service. Counsel for the applicants, therefore, submitted that invalidment from service is also to be inferred in a case where a person is not discharged prematurely despite the disability/war injury attributable to or aggravated by military service and is allowed to serve till the completion of the tenure.

27. Learned counsel for the applicants alternatively submitted that even if it is treated that a person, who has completed his normal tenure despite his disability/war injury and is not prematurely discharged, cannot be said to be invalided out of service and as such is not entitled to the benefit of para 7.2 of the Government Letter dated 31.01.2001, in that eventuality, the classification made by the

respondents in making the two groups in the aforesaid manner was hit by Articles 14 and 16 of the Constitution of India, being discriminatory and arbitrary.

28. Learned counsel for the respondents, on the other hand, submitted that the decision rendered in **K.J.S. Buttar's** case (supra) was per incuriam in view of the fact that paragraphs 8.2 and 11.5 and other related paragraphs of the Government Letter dated 31.1.2001 were neither brought to the notice of the Bench nor the same were given due consideration. The entire decision was rendered only on the basis of para 7.2 of the aforesaid Government Letter.

29. Learned counsel for the respondents next submitted that even if it is assumed that the meaning of the term 'Invalidment from service' as propounded by the Division Bench of the Delhi High Court in **Maharvir Singh Narwal's** case (supra) and the Apex Court in **K.J.S. Buttar's** case is accepted and it is held that if an individual was in low medical category at the time of his release than the medical category he had been placed at the time of his recruitment, it is to be treated that the individual was invalided out of service, will

make no difference, in view of the fact that the Government Letter dated 31.1.2001, while propounding the principle of broad banding of disability pension/war injury pension, has expressly excluded from the purview of para 7.2, those who were not invalidated out prematurely and had been allowed to complete their tenure of service. Therefore, para 7.2 of the Government Letter is to be read only for those who could not complete their normal tenure of service and were discharged prematurely.

30. According to the learned counsel for the respondents, no meaning could be assigned to para 7.2 or 10.2 of the Government Letter dated 31.1.2001 so as to make the provisions contained in para 8.1, 8.2, 10 and 11 as redundant and nugatory. He next submitted that no interpretation was permissible to make a provision redundant or nugatory. Learned counsel for the respondents further submitted that the principles laid down in the case of **Mahavir Singh Narwal** (supra) could not be applied in a straitjacket manner, to the facts and circumstances of the present case, especially in view of the various provisions contained in the Government Letter

dated 31.1.2001.

31. With regard to the discriminatory classification as submitted by the learned counsel for the applicants, the learned counsel for the respondents submitted that, there was no discrimination if the respondents classified the claimants of disability/war injury pension in two groups; one comprising of those whose tenure, due to invalidment, was reduced and the other, comprising of those, who were not discharged prematurely. According to the learned counsel for the respondents, these two categories were distinct and separate classes and there was a reasonable basis to make the classification between these two groups. The persons whose tenure was cut due to the invalidment were deprived of the service benefits of the remaining tenure such as pay and allowances, seniority, promotion and also have to face reduction in service pension due to lesser tenure of service which they would have earned, had they been allowed to continue in service till the expiry of the normal tenure. Whereas the persons, who were allowed to serve till the last date of their tenure and were not prematurely discharged,

have advantages of pay and allowances for the entire tenure besides the benefit of promotion and larger rate of service pension. In this view of the matter, if the benefit of rounding off of disability/war injury pension was allowed to be confined only to the persons whose tenures were reduced due to the invalidment from service, it could not be said that the provision was discriminatory or arbitrary. Since the premature discharge cases had the aforesaid disadvantages of not getting the pay and allowances for the remaining period of service including the benefit of promotion etc. and had also the disadvantages of getting reduced rate of service pension due to cut of service tenure, therefore, the benefit of rounding off was extended to them.

32. We have considered the rival submissions. We are of the view that the stand of the applicants do not appear to be correct. No doubt, in **Mahavir Singh Narwal's** case, the scope of the expression 'Invalidment from service' had been extended to including those who were in low medical category at the time of their release than the medical category in which they had been placed at the time of their recruitment, but the

said principle was propounded in a case where the question of eligibility to claim disability pension arose on the ground that the individual, who had requested for his discharge, was liable to be treated as the person invalided from service. Therefore, the question in that case was whether the disability pension was payable to a person who was discharged on compassionate grounds and had a disability at that time attributable to or aggravated by service. While considering the question of such entitlement, the Division Bench of the Delhi High Court held that the person concerned was entitled to disability pension. Therefore, the meaning of the term, 'Invalidment from service' assigned in **Mahavir Singh Narwal's** case cannot be applied in a straitjacket manner, in a case where the person suffering from a disability is not only retained in service but is also allowed to complete his tenure despite the disability, such person has been expressly excluded by the Government letter dated 31.1.2001 from the category of persons whose tenure has been cut due to the premature discharge. Unless the classification is shown to be discriminatory, the two classes, already placed differently, cannot be said to be governed by the same principle. The Government Letter dated 31.1.2001

(as per para 8.2 and 11.5) has expressly provided that the armed forces personnel who were retained in service despite the disability/war injury and were retired/discharged on completion of tenure or on attaining the age of retirement, will not be entitled to the benefit of rounding off of pension in terms of Government Letter dated 31.1.2001. When express provisions with regard to such Armed Forces personnel has been made in para 8.2 and 11.5, we fail to understand as to how it can be contended that such persons were entitled to the benefit of para 7.2 or 10.2 of the Government letter in place of the benefits contained in para 8.2 and 11.5. If this way of interpretation is accepted, it would amount to making the provisions of the para 8.2 and 11.5 inapplicable and redundant. Therefore, the proper interpretation is to extend the benefit granted by para 7.2 or 10.2 to only those whose tenure was cut due to the invalidment and not to those who were allowed to complete their tenure despite the disability. In such situations, the decision rendered in ***Mahavir Singh Narwal's*** case (supra) is of no help to the applicants, who completed their normal tenure.

33. So far as the decision rendered in **K.J.S.Buttar's case** is concerned, it is also of no help to the applicants for two reasons, firstly, the provisions of para 8.2 and 11.5 and other related paragraphs of the Government Letter dated 31.1.2001 had not been brought to the notice of the Bench nor they were referred to in the decision, secondly, the previous decision of the Apex Court in **P.K.Kapur vs. Union of India**, (2007) 9 SCC 425, had also not been referred to. In **P.K.Kapur's** case, the Apex Court held that the benefit of enhancement was given to those officers who stood invalided out of service because their tenure of service was cut due to disability or war injury. The relevant observations of the Apex Court made in paragraph 12 of the judgment, being relevant is reproduced as follows:

"12. We do not find any merit in the above arguments. As stated above, appellant stood superannuated from the Indian Army on 30.11.1989. He was entitled to war disability pension. He has been paid arrears on that basis on and from 30.11.1989. Under Government of India Letter No.PC 1(2)/97/D (Pen-C) dated 16.5.2001 the rate of war injury element for hundred per cent disability in battle casualty cases has been prescribed. It is in accordance with the rates mentioned in para 11.2 of the letter of Government of India No.1(2)/97/D (Pen-C) dated 31.1.2001. Under O.M. dated 3.2.2000 the benefit of enhancement of percentage of disability, and not the rates, is

given to officers who were in service on or after 1.1.1996. This enhancement is from 30% to 50%. Appellant claims this enhancement from 30% to 50% in his case also. However, O.M. dated 3.2.2000 states that the said enhancement shall be applicable only to those officers who stood invalided out of service. This provision is not applicable to the appellant who retired on superannuation prior to 1.1.1996. Appellant was not invalided out of service. He completed his normal tenure of service. The benefit of enhancement is given to those officers who stood invalided out of service because their tenure of service got cut due to invalidment on account of disability or war injury. Therefore, the appellant does not fall in the category of invalidment. The Government is always entitled to classify officers who stood retired vis-a-vis the officers whose tenure of service got reduced due to invalidment. These are two distinct and separate categories. Hence, there is no violation of Article 14 of the Constitution.”.

34. Learned counsel for the applicants tried to distinguish the decision of **P.K.Kapur's case** (supra) on the ground that the said decision was rendered on the basis of the O.M dated 3.2.2000, and the provisions of Government Letter dated 31.1.2001 were not considered. It is true that in **P.K.Kapur's** case, the Apex Court dealt with the matter according to O.M dated 3.2.2000, but in paragraph 12 already extracted hereinbefore, the Apex Court had also taken into account para

11.2 of the Government Letter dated 31.1.2001, which implies that the Government Letter dated 31.1.2001 had also been considered by the Apex Court. The O.M dated 3.2.2000 which has already been extracted in paragraph 7 of this order, was issued not only for the Armed Forces personnel, but also for other officers/employees of the Central Government. In that letter too, a provision for rounding off of the disability pension almost in the same line as has been provided in para 7.2 of the Government Letter dated 31.1.2001 was incorporated. The Apex Court, taking into account the various circumstances, opined that the rounding off of the disability pension was available to only those whose tenure got cut due to invalidment from service. The benefit was not extended to persons who completed their normal tenure. The Apex Court decision in P.K.Kapur's case does not lose its significance only on the ground that O.M dated 3.2.2000 was incorporated in that case. More so, recently in **Union of India and Others Vs. Nk.Narikar** (Civil appeal No.8433-8434 of 2009) decided on 24.5.2012, the Apex Court re-iterated the aforesaid principle rendered in **P.K.Kapur** (supra) and very specifically held that the benefit of rounding off was not available to the respondent

therein who had completed his tenure in the Army.

35. Counsel for the applicants could not point out that the decision in **Nk.Narikar's case** was not rendered on the basis of Government Letter dated 31.1.2001. The Principal Bench of the Tribunal had also occasion to examine the relevancy of the aforesaid three decisions, namely, **P.K.Kapur** (supra), **Nk.Narikar** (supra) and **K.J.S.Buttar** (supra), in O.A.No.292 of 2011, **Ex Sep Rambir Singh vs. Union of India and Others**, decided on 10th October, 2012, and held that the view expressed in **Nk.Narikar** (supra), being the latest, was liable to be followed. The Principal Bench further noticed that the first case on the point was that of **P.K.Kapur** (supra), but the said decision was not before the Apex Court in **K.J.S.Buttar's** case (supra). The Principal Bench further found that **K.J.S.Buttar's** case was not brought before the Apex Court in **Nk.Narikar's** case (supra).

36. In view of the aforesaid, we are of the view that the benefit of broad banding (rounding off) of the pension as

provided in para 7.2 or 10.2 of the Government Letter dated 31.1.2001 has been confined to only those whose tenure is cut due to invalidment from the service on account of the disability. Such benefit is not available to the persons who are retained in service despite the disability/war injury and are allowed to complete their tenure. In this connection, a reference may be made to paragraphs 8.1 and 8.2 in the matter of disability pension and para 11.4 and 11.5 in the matter of war injury pension.

37. So far as the submission with regard to discriminatory classification between the persons whose tenure is cut due to invalidment on the one hand, and the persons whose tenure is not cut, on the other, is concerned, it has no substance. There appears to be a rationale behind the classification. Since the person who is invalided out of service prematurely due to the disability/war injury is deprived of the remaining tenure of service due to invalidment, consequently, the benefit of pay and allowances, seniority, promotion, service element of pension on the basis of length of service etc, is also adversely affected due to the invalidment in his matter.

Whereas, the other category, who is not discharged prematurely despite the disability/war injury and is retired/discharged on completion of his tenure or on attaining the age of superannuation gets all such benefits without any curtailment. In this way, both the said categories cannot be said to be similarly placed and are, therefore, two distinct and separate classes.

38. In the matter of ***Union of India and Others vs. Ajai Wahi***, AIR 2010 SC 2603, the Apex Court had occasion to consider the case of parity in the matter of officers who had been granted voluntary retirement with the officers who had been invalided out from service on account of a disability attributable to or aggravated by the military service. The Apex Court propounded that the officers invalided out of service and seeking voluntary retirement, which can be on umpteen grounds, constitute a different and distinct class than those invalided from service on the ground of disability attributable to or aggravated by military service.

39. In ***P.K.Kapur's case*** (supra) too, the Apex Court held that the Government is always entitled to classify the officers who stood retired vis-a-vis officers whose tenure of service got reduced due to invalidment. These are two distinct and separate categories. Hence, there is no violation of Article 14 of the Constitution.

40. We, therefore, do not agree with the submission that the para 7.2 and 10.2 of the Government Letter dated 31.1.2001 are arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. The classification made by the Government, seems to be just and reasonable.

41. The learned counsel for the respondents tried to contend that the benefit of the letter dated 31.1.2001 was available to only those armed forces personnel who were in service on 1.1.1996 and joined the service thereafter and contended that the benefit provided in para 7.2 and 10.2 of the Government Letter was extended to pre 1996 retirees (both officers and PBORs) with effect from 1.7.2009 vide

Government of India, Ministry of Defence, Department of Exservicemen Welfare Letter No.10 (01)/D(Pen/Pol)/2009/Vol.II dated 19th January 2010 (hereinafter referred to as "Letter dated 19th January, 2010"). In this connection, the counsel for the applicant submitted that in ***K.J.S.Buttar's case*** (supra), the Apex Court extended the benefit of aforesaid para 7.2 to pre-1.1.1996 retirees also by holding that the classification, pre and post 1.1.1996 retirees was violative of Articles 14 and 16 of the Constitution of India.

42. In reply, counsel for the respondents submitted that the aforesaid letter dated 19.1.2010 was not considered in ***K.J.S.Buttar*** (supra), therefore, the applicants were not entitled to the benefit of the decision rendered in ***K.J.S.Buttar's case***. In our view, the submissions made on behalf of the respondents do not appear to be correct in law. In this connection, the decision of the Constitution Bench in ***D.S.Nakara vs. Union of India and Ors.*** (1983) 1 SCC 305, is also very relevant, which has laid down the principle that the classification amongst the pensioners based on the date of

retirement amounts to denying the equality as enshrined in Article 14 of the Constitution of India. The Constitution Bench very specifically held that for the purpose of pension benefits, the pensioners form a homogenous class, which cannot be divided by arbitrarily fixing an eligibility criterion unrelated to the purpose of revision of pension. It appears that the Apex Court in **K.J.S.Buttar's** case propounded the aforesaid quoted principle on the basis of the decision in **D.S.Nakara's** case (supra). In **K.J.S.Buttar's case**, 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 liberalisation 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."

14. In our opinion, the appellant was entitled to the benefit of para 7.2 of the instructions dated 31.1.2001 according to which where the disability is assessed between 50% and 75% then the same should be treated as 75%, and it makes no difference whether he was invalided from service before or after 1.1.1996. Hence the appellant was entitled to the said benefits with arrears from 1.1.1996, and interest at 8% per annum on the same."

43. In view of the aforesaid, the benefit extended by para 7.2 or 10.2 of the Government Letter dated 31.1.2001 with effect from 1.1.1996 could not be denied to 'pre-1.1.1996 retirees'. The respondents have adopted two different yardsticks between pre and post 1.1.1996 retirees without any reasonable basis. The persons who retired on 1.1.1996 itself have been given the benefit of rounding off of the disability pension and other benefits by the Government letter dated 31.1.2001 with effect from 1.1.1996. But the pre 1.1.1996 retirees have been granted the benefit by the Government

letter dated 19.1.2010 with effect from 1.7.2009 only. We do not find any justification in fixing two different dates for the commencement of the benefit for post and pre 1.1.1996 retirees, especially when both these categories are similarly placed, excepting the date of their retirements, which could not be made as the basis to make the classification. In our view, the Government Letter dated 19.01.2010 could not take away the decision of the Apex Court in ***K.J.S.Buttar's case***, which was based on the interpretation of Articles 14 and 16 of the Constitution of India and by which the Apex Court held that the classification was unconstitutional. Any unconstitutional act or order cannot be revived or made effective in any way by any Government order. To put it otherwise, whatever is unconstitutional, it cannot be given effect to by any State action. Therefore, the Government letter dated 19.1.2010 and other consequential letters and actions have to face the same consequence. We are, therefore, of the view that pre 1.1.1996 invalided Officers/ PBORs are also entitled to the benefits extended by para 7.2 or 10.2 of the Government Letter dated 31.1.2001 with effect from 1.1.1996.

44. The cases set up by the applicants, need to be examined in the backdrop of the aforesaid principles.

45. The applicants in O.A.Nos.120/2011, 11/2012, 81/2012, 87/2012, 4/2012, 27/2012 and 90/2012, had completed their tenure, which was not cut in any way due to the discharge, therefore, they are not entitled to the benefit conferred by the aforesaid para 7.2 or 10.2, as the case may be, of the Government Letter dated 31.1.2001. The applicant in O.A.No.167 of 2012 had no doubt, completed his tenure, but he was granted extension of service for another two years with effect from 28.2.1995 to 28.2.1997. During the extended period, the applicant was downgraded to low medical category BEE (P) and was accordingly discharged from service with effect from 1.4.1996. As such the applicant's extended tenure got cut due to the discharge, therefore, in our opinion, he is entitled to the benefit of the rounding off as per the para 7.2 with effect from 1.4.1996, being the date of his discharge. The applicant in O.A.No.122 of 2011 had sustained a disability, due to which he requested for discharge, which was allowed, so

his tenure was cut. More so, he has already been sanctioned disability pension, which is being paid to him regularly. The counsel for the respondents, tried to contend that the applicant in O.A.No.122 of 2011 was not entitled to the benefit of rounding off of the disability pension, as he had not been invalided out of service. In our view, the submission made on behalf of the respondents does not appear to be tenable in law. Once the respondents granted him disability pension by treating him as invalided from service, they cannot be permitted to take the stand that he was not invalided out of service. More so, as per the decision rendered in **Mahavir Singh Narwal** (supra), the applicant in O.A.No.122 of 2011, is liable to be placed within the category of the persons invalided out of service for the purposes of para 7.2 of the Government letter dated 31.1.2001. It is quite relevant to record that, the discharge results in reducing the tenure and the disability plays an important factor to seek the discharge, therefore, the denial of the benefit of para 7.2, in such matters, does not appear to be proper. It is also significant to state that the rounding off of the disability pension/war injury pension benefit is applicable in every case of disability/war injury resulting in reducing the

tenure due to the discharge on account of a disability. How a different opinion can be taken in a case where the discharge had been allowed on the request of the individual on the ground of disability attributable to or aggravated by military service. When a person sustains a disability attributable to or aggravated by military service, to the extent of 20% or more, and he finds himself unable to serve the military due to the disability and accordingly seeks his discharge only on the ground of disability, which is allowed by the Government, his case also needs to be placed in the category of persons who is invalided out of service on the recommendation of the Invaliding Medical Board and to this extent, the benefit extended by the Division Bench of the Delhi High Court in **Mahavir Singh Narwal** (supra) is available to such person. In this view of the matter, we consider it just and expedient to hold that the applicant in O.A. No.122 of 2011 is entitled to the benefit of rounding off of the pension as per the para 7.2 of the Government Letter dated 31.1.2001.

46. In view of the aforesaid, O.A.Nos.167 of 2012 and 122 of 2011 are liable to be allowed and the other O.As are

liable to be dismissed.

47. O.A. Nos.122 of 2011 and 167 of 2012 are allowed. The respondents are directed to grant the benefit of broad banding (rounding off) of disability pension as provided in para 7.2 of the Government Letter dated 31.1.2001 to the applicant in OA No.167 of 2012 with effect from 1.4.1996 and also to the applicant in O.A.No.122 of 2011 with effect from 21.3.2006, with all consequential benefits including arrears of disability pension. Since the disabilities of the said applicants were assessed at 20% each, therefore, the disability pension payable to each of them is directed to be rounded off to the extent of 50% with effect from their respective discharge.

48. OA.Nos.120/2011, 11/2012, 81/2012, 87/2012, 4/2012, 27/2012 and 90/2012 are dismissed.

49. There will be no order as to costs.

50. Inform the parties.

51. In our view, in all these present matters, an important point of law of general public importance is involved. We, therefore, consider it just and expedient in terms of Section 31 of the Armed Forces Tribunal Act to grant to the

applicants in O.A.Nos. 120/2011, 11/2012, 81/2012, 87/2012, 4/2012, 27/2012 and 90/2012 and the respondents in O.A. Nos.122 of 2011 and 167 of 2012, the leave to appeal to the Supreme Court. Accordingly the leave to appeal to the Supreme Court is granted.

52. Let a copy of this order be placed on the records of the connected cases.

Sd/-
LT. GEN. THOMAS MATHEW,
MEMBER (A)

Sd/-
JUSTICE SHRI KANT TRIPATHI,
MEMBER (J)

DK.

(True copy)

Prl. Private Secretary