

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI
(Circuit Bench at Goa)**

Original Application No. 123 of 2018

Thursday, this the 22nd day of December, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ankur Chaturvedi, Ex Cadet Army
S/o Late Col. Hem Prakash Chaturvedi
Ordinarily residing at 301-A, Ganges Residency,
36 Tollygunge Circular Road, Kolkata-700053

.... Applicant

Ld. Counsel for the Applicant : **Mr. A. Ojha**, Advocate

Versus

1. Union of India (Through Secretary, Ministry of Defence),
South Block, New Delhi – 110011.
2. The Chief of Army Staff, Ministry of Defence (Army),
Integrated Headquarters Sena Bhawan, New Delhi – 110011.
3. The Principal Controller of Defence Accounts (Pension),
Draupadi Ghat, Allahabad (UP) – 211014.
4. The Commandant National Defence Academy, NDA
Khadakwasla, Pune (Maharashtra) – 411102.

... Respondents

Ld. Counsel for the Respondents : **Ms. Anamika Malhotra**,
Central Govt. Counsel

ORDER (Oral)

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

“A. That the Hon’ble Tribunal be pleased to call for the records of the case, Medical documents etc. from the Respondents and after examining the same, quash and set aside the impugned order (Annexure A-1) and thereafter direct the respondents to release disability pension of 20%, rounded off to 50% in favour of the applicant alongwith 12% interest on arrears.

B. For exemplary damages/compensation for unlawful discharge, non release of disability pension, loss of honour and harassment.”

2. Brief facts of the case giving rise to this application are that applicant joined National Defence Academy (NDA) in January 1993 on being enrolled/appointed as a Cadet in the Indian Army. The applicant sustained injury during training at NDA in July 1995 which was considered as attributable to service. The Invaliding Medical Board (IMB) assessed disability of the applicant, **“MESANGIOPROLIFERATIVE GLOMERULONEPHRITIS” @ 20%** for two years and recommended invalidation of the applicant.

Accordingly, applicant was invalidated out from service on 19.01.1996 in low medical category. The applicant was issued PPO No. M/Dis/369/96, granting disability element @ 20% from 20.01.1996 to 15.12.1997. After expiry of two years, RAMB of the applicant was not held and disability pension of the applicant was stopped. In this regard, applicant lodged online grievance on 11.09.2014 and 22.04.2015 which was replied by the respondents vide communication dated 21.07.2015 stating therein to report to the nearest military hospital for review/RAMB. The RAMB of the applicant was held on 31.03.2016 at Base Hospital Kolkata wherein 20% disability for life including period from 08.12.1997 to 10.03.2016 was granted but applicant has not been paid disability pension after holding RAMB. It is in this prospective that instant Original Application has been filed.

3. Learned counsel for the applicant pleaded that applicant has been granted Ex-gratia award @ Rs. 375/- per month w.e.f. 20.01.1996 for life and 20% disability award from 20.01.1996 to 15.12.1997 but after holding RAMB, applicant has not been paid disability pension @ 20% duly rounded off to 50% for life in terms of **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of

2012 decided on 10 December, 2014), Government of India, Ministry of Defence letter dated 31.01.2001 and Hon'ble Delhi High Court's judgment in the case of **Puneet Gupta Vs Union of India**, WP (C) 6466/2014, decided on 12.07.2016 and **Lady Cadet Shivanjali Sharma vs. Union of India & Ors**, W.P. (C) No. 1143 of 2011, decided on 26.03.2012.

4. On the other hand, learned counsel for the respondents submitted that applicant was invalided out from service on medical grounds on 19.01.1996. The applicant was granted disability element @ 20% for two years and thereafter, RAMB was held on 31.03.2016 wherein 20% disability was granted for life including intervening period from 08.12.1997 to 10.03.2016. He further contended that applicant was a cadet undergoing training at NDA and therefore, he is not subject to Army Act. The conditions of pay and allowances which are applicable to personnel of the Armed Forces do not apply to a cadet undergoing training at NDA. Therefore, applicant is not entitled the reliefs prayed in the Original Application.

5. Heard the learned counsel for the parties and perused the material placed on record.

6. In this regard, Govt. of India, Ministry of Defence letter dated 3rd Sept. 1996 addressed to Chief of the Army Staff, New Delhi (Annexed as Annexure AR-2 of O.A.) in which applicant has been granted Ex-gratia award and disability award @ 20%, is reproduced as below:-

“No. 2(66)/96/D (PEN-C)
Government of India,
Ministry of Defence,
New Delhi, the 3rd September, 1996

To

The Chief of the Army Staff,
New Delhi

Subject : Grant of Ex-Gratia Awards in respect of Ex-G.C. No. 22416
Shri A Chaturvedi.

Sir,

I am directed to say that it has been decided in consultation with the competent medical authorities that the disability viz, ID Mesangio Proliferative Glomerulonephritis of Ex-Cadet A. Chaturvedi who was invalided out of the NDA, K'wasla with effect from 19.1.96 on account of the above disability be recorded as attributable to his military training and accordingly to convey the sanction of the President to the grant of the following :-

- i) Ex-gratia award @ Rs. 350/- per month (Rupees Three hundred and seventy five onl) with effect from 20.1.96 for life, and
- ii) Disability award @ 20% for a period of 2 years from 20.1.96 (the date of invalidment from military training to 15.12.97 (viz, 2 years from the date on which the Invaliding Medical Board was held) subject to review of the disability by the RSMB and continuance of otherwise of the disability award as per the rules and procedures applicable for the regular commissioned officers of the Armed Forces.

2. The above awards shall be regulated in terms of the provisions contained in this Ministry's letter No. 1(5)/93/D(Pen-C) dated 16.4.96.

3. This issue with the concurrence of Finance Division vide their U.O. No. 2112/Pens of 1996.

Sd/- x x x x x x
(N.N. MATHUR)
Under Secretary to the Government of India”

7. Thereafter, a letter No. IDS/40027/13/3/Withdrawal/AFTI/NDA dated 01.07.2016 has been issued by HQ IDS, Ministry of Defence (Annexed as Annexure AR-2 of Original Application) in which it is stated that Re-Assessment Medical Board (RAMB) of the applicant was conducted on 31.03.2016 at Base Hospital, Kolkata wherein 20% disability for life including period from 08.12.1997 to 10.03.2016 was granted and RAMB proceedings were sent to PCDA (P) Allahabad for grant of ex-gratia award.

8. A similar matter has also been dealt by the High Court of Punjab & Haryana in CWP No. 12302 of 2020, **Jaya Shubhey Madan vs. Union of India**, decided on 20.08.2020 in which the Hon'ble Court has directed the respondents to consider the grievances of the petitioner contained in her representations and to remove the discrimination of disability pension between disabled Officer-Trainees of Civil Government and Defence Services.

9. Govt. of India, Ministry of Defence vide their letter dated 4th Sept. 2017 has clarified grant of monthly Ex-gratia award and disability award to Ex Cadets. The letter is reproduced as below:-

“No. 17(01)/2017(01)/D(Pension/Policy)
Government of India,
Ministry of Defence,
Department of Ex-Servicemen Welfare
New Delhi, Dated 4th September, 2017

To

The Chief of the Army Staff,
The Chief of the Naval Staff,
The Chief of the Air Staff,

Subject : Implementation of Government's decision on the recommendations of the 7th Central Pay Commission (CPC) – Revision of pension of pre-1.1.2016 Defence Forces pensioners/family pensioners etc.

Sir,

The undersigned is directed x x x x x x x x .

2. The recommendations of the x x x x x x x x x x .

3. Para 13 of this Ministry's above quoted letter dated 29.10.2016 regarding “Ex-gratia awards to Cadets in cases of disablement” shall be replaced with the following :

13. EX-GRATIA AWARDS TO CADET (DIRECT) The ex-gratia award payable to Cadet)Direct)/NoKs in cases of disablement/death shall be payable subject to the same conditions as hitherto in force in the event of invalidment on medical ground/death of a Cadet (Direct) due to causes attributable to or aggravated by military training :-

(i) Monthly Ex-gratia amount of Rs 9,000/- per month

(ii) In cases of disablement, Ex-gratia disability award @ Rs 16,200/- per month shall be payable in addition for 100% of disability during period of disablement subject to prorate reduction in case the degree of disablement is less than 100%. “No ex-gratia disability award shall be payable in cases where the degree of disablement is less than 20%.”

4. The dearness relief sanctioned by the Government from 1.1.2016 and thereafter, shall also be paid on rates of disability element and monthly ex-gratia award to Cadet(Direct), revised in accordance with the provision of this letter.

5. Vide para x x x x x x x x x x x x .

6. With reference x x x x x x x x x x .

7. The provisions x x x x x x x x x x x x .

8. The provisions of this letter shall take effect from 1.1.2016.

9. This issues with the x x x x x x x x x x .

10. Hindi version will follow.

Sd/- x x x x x x

(Manoj Sinha)

Under Secretary to the Government of India”

From para 4 of the letter quoted above, it is clear that cadets will be awarded ex-gratia disability award which is disability element and not disability pension (which consists both service element and disability element), therefore, applicant is entitled disability element and not disability pension.

10. Once a policy on award of monthly ex gratia amount and ex gratia disability to cadets has clearly been spelt out as above, and if the same is not being implemented by the authorities in respect of this cadet and even if this Tribunal has no jurisdiction with regard to officer cadets undergoing training at NDA/IMA/AFA/INA etc., as per respective Army/Navy/Air Force Acts, even then, it will not be proper for this Tribunal to overlook the justified plea of the applicant, merely on the ground of jurisdiction, as emphasised by the respondents, especially when respondents are failing to comply with their own very clearly laid down policy on the subject.

11. From the above, it is clear that applicant is entitled to Ex-gratia award @ Rs. 375/- per month for life (as revised from time to time) and disability award @ 20% for life. Therefore, we take note of the judgment of the Hon'ble Supreme Court in the case of **Ram Avtar (supra)**, Government of India, Ministry of Defence letter dated 31.01.2001 and Hon'ble Delhi High Court's judgment in the case of

Puneet Gupta (supra) in which rounding off benefit of disability pension has been granted to cadets on being invalided out from service. Hence, we would like to point out here that Officer Cadets on being invalided out are not granted disability pension but are granted ex-gratia allowances comprising two elements, i.e. monthly ex-gratia and ex-gratia disability award. Since, applicant is already in receipt of Ex-gratia award as revised from time to time and has already been paid disability element @ 20% from 20.06.1996 to 15.12.1997, therefore, applicant is held entitled disability award (disability element) @ 20% for life from 16.12.1997 which will stand rounded off to 50% for life in accordance with the Hon'ble Supreme Court decision in the case of **Ram Avtar** (supra) and Government of India, Ministry of Defence letter dated 31.01.2001 and Hon'ble Delhi High Court's judgment in the case of **Puneet Gupta** (supra).

12. As a result of foregoing, the Original Application is allowed. The impugned order passed by the respondents is set aside. The applicant is entitled to get the benefit of rounding off of disability award (disability element) @ 20% for life, rounded off to 50% from the date it was stopped, i.e. w.e.f. 16.12.1997 for life. The respondents are directed to grant disability award (disability element)

@ 50% for life w.e.f. 16.12.1997. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrears of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of initial filing of this O.A is 14.12.2018. The respondents are further directed to give effect to the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum from the date of this order till the date of actual payment.

13. No order as to costs.

14. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 22 December, 2022
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