

SEE RULE 102(1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

T. A. NO.01/2015

THIS 25TH DAY OF JANUARY, 2016

CORAM

HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT(S)

JAGABANDHU MISHRA
S/o Late Dinabandhu Mishra
Vill – Arakhapal, P.O. Khurusia,
P.S. Kamakshya Nagar
Dist.-Dhenkanal - Odisha

-versus-

RESPONDENT(S)

1. Deputy Commandant,
H.Q.1, EME Centre
Secunderabad,
Andhra Pradesh.
2. Major, Officer Commanding
STA, KKSP, EME, Balasore
At/Po/Dist. Balasore – Odisha.

For the petitioner(s) : Miss Manika Roy, Advocate

For the respondent(s) : Mr. Anup Kr. Biswas, Advocate

ORDER

PER HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)

1. The applicant herein preferred W.P.(C) No. 16719 of 2010 before the Hon'ble High Court at Orissa claiming disability pension. That writ petition was transferred to this Bench by the Hon'ble High Court in

terms of Section 34 of the Armed Forces Tribunal Act, 2007 (AFT Act) vide its order dated 27.11.2014 and the same has been renumbered as T.A. No. 01 of 2015.

2. Undisputed facts led to this application are that the applicant was enrolled in the rank of Sep in the Indian Army (EME Corps) on 30.12.1982 and was discharged from service on 31.07.1989 under Rule 13(3)(III)(IV) of the Army Rules, 1954 on his own request before completion of his terms of engagement. At the time of discharge the applicant possessed specific disability owing to a gunshot wound in his left foot with 30 per cent disablement, which was considered attributable to military service. However, he was not granted disability pension as per the then existing provisions being a case of premature discharge at his own request.

3. The appeal preferred by the applicant there against was dismissed by the respondents vide order dated 24.07.2010. Hence this application.

4. We have heard the learned counsel for both the parties and perused records.

5. The question arises for our determination in the instant case is that the applicant, who was discharged from service on 31.07.1989 at his own request before completion of his terms of engagement and was possessing disability to the tune of 30 per cent owing to a gunshot wound in his left foot which was considered attributable to military service, is entitled to disability pension or not. As per Regulation 50 of the Pension Regulation for Indian Army (Part-I), 1961, a person who retires voluntarily shall not be eligible for any award on account of any disability. Notification dated 29.09.2009 has been issued by the Govt. of India, Ministry of Defence for giving benefit to the persons who have sought voluntary retirement, as earlier it was not possible to be given because of Regulation 50 and thus, Regulation 50 was watered down by issuing Notification 29.09.2009, which reads as under :

*“No. 16(5)/2008/D(Pen/Policy)
Government of India Ministry of Defence
Deptt. Of Ex-Servicemen Welfare
New Delhi 29th Sept. 2009*

To
*The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff*

Subject : Implementation of Government decision on the recommendation of the Sixty Central Pay Commission – Revision of provisions regulating Pensionary Awards relating to disability pension/war injury pension etc. for the Armed Forces Officers and personnel Below Officer Rank (PBOR) on voluntary retirement/discharge on own request on or after 1.1.2006

Sir,

The undersigned is directed to refer to Note below Para 8 and Para 11 of the Ministry's letter No. 1(2)/97/D()Pen-C) dated 31.1.2011, wherein it has been provided that Armed Forces personnel who retire voluntarily or seek discharge on request, shall not be eligible for any award on account of disability.

2. In pursuance of Government decision on the recommendations of the Sixty 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. Pension Regulations for the three Services will be amended in due course.

5. This issue with the concurrence of Ministry of Defence (fin.) vide their U.O. No. 3545(fin/Pen) dated 29.09.2009.

6. Hindi version will follow.

*Yours faithfully,
(Harbans Singh)
Director (Pen/Policy)*

Copy to :- As per standard list.”

6. As per this Notification the benefit has been extended to the Armed Forces personnel as mentioned in Para – 2 of the aforesaid notification, but in Para – 3 they have stated that this will be applicable

from 01.01.2006, that means, persons who have sought voluntary retirement on or after 01.01.2006 will be benefited and the rest will not be benefited.

7. Ld. Counsel for the respondents would submit that the persons who have sought voluntary retirement on or after 01.01.2006 are now entitled for disability pension in accordance with the aforesaid notification, but as the applicant has discharged prior to 01.01.2006 the benefit of notification dated 29.09.2009 cannot be extended in his favour.

8. Per contra Id. Counsel for the applicant has invited our attention to the subsequent notification dated 03.08.2010, which reads as under :

“Tele - 23335048

*Addl Dte Gen Personnel Services
Adjutant General's Branch
Integrated HQ of MoD (Army)
DHQ PO, New Delhi-110011
B/39022/Misc/AG/PS-4 (L)/BC*

*All Legal Cell s
All line Dtes*

*GRANT OF DISABILITY PENSION TO PREMATURE RETIREMENT
CSES PROCEEDING ON DISCHARGE PRIOR TO 01 JAN 2006*

1. Further to this office note No. A/39022/Misc/AG/PS-4(Legal) dt 22 Feb 2010 on subject matter.

2. It is clarified that as and when a pre-2006 retiree PROB files a court case to claim disability pension which was denied to him merely because he had proceeded on Pre-Mature Retirement, such cases will be immediately processed for Government Sanction through respective Line Dtes and not contested. Government Sanctions in which cases will also be proposed in the same manner as that followed in cases of Government Sanctions issued in compliance of court cases.

3. This arrangement ~~will~~ affective til MoD/D(Pen/Legal) formulated and issues comprehensive Govt orders.

4. It is re-~~iter~~ ~~ated~~ ~~that~~ only those cases where disability pension

was denied to a PBOR solely on the grnds that he had proceeded on PMR will be processed for sanction and will not be contested. Which implies that as and when a PBOR files a case of similar nature their case files will be processed for Govt sanction without awaiting court order.

5. Contents of this letter are not applicable to offers as PRA, Rule 50 has been upheld by Hon'ble Supreme Court in judgment dt 06 July 2010 in case of Lt Col Ajay Wahi (SLP. No. 25586/2004, Civil Appeal No. 1002/2006).

7. All line Dtes are requested to give vide publicity to this letter amongst All Record Offices.

Copy to:

*MoD/D(Pen/Legal)
JAG Deptt''*

The aforesaid circular clarified that as and when a pre 01.01.2006 retiree PBOR files a court case to claim disability pension which was denied to him merely because he had proceeded on pre-mature retirement, such cases will be immediately processed for Government sanction through respective Line Dtes and not contested. Also that such cases will be processed in the same manner as that followed in cases of Government sanctions issued in compliance of court cases. That means, Government has relaxed the condition for the PBOR, even if they sought voluntary retirement prior to 2006, they will not be denied the benefits of disability pension as per rules.

9. Admittedly, the applicant is a PBOR, that is, he was discharged as Sep and, therefore, denial of disability pension to the applicant on the face of it per se illegal.

10. Moreover, the Principal Bench of this Tribunal while deciding the case of Maj (Redt) Rajesh Kumar Bhardwaj Vs. Union of India & Ors. (O.A. No. 339 of 2011) has gone through almost all the views expressed by the Hon'ble Apex Court in the cases of (i) Union of India & Ors. Vs. SPS Vains & Ors. (2008(9)SCC 125); (ii) K.J.S. Buttar Vs. UOI (2011-11 SCC 429); (iii) D.S.Nakara Vs. UOI (1983(1)SCC 305) – and has extended the benefits of notification dated 29.09.2009 and 03.08.2010 in favour of armed forces officials striking down Para-3 of the notification dated 29.09.2009.

11. The Regional Bench at Chandigarh of this tribunal in the case of Sandeep Bansal Vs. Union of India & Ors. (O.A. No.2584/2013) and in the case of SPS Bedi Vs. Union of India & Ors (O.A.2952/2012) has extended the benefit of the aforesaid circulars to the pre 2006 retirees placing reliance of the order of Principal Bench (Supra).

12. Yet, again in the case of Union of India & Ors. Vs. Amrik Singh (Civil Appeal No. 6317/2009), the Hon'ble Apex Court had extended the benefit of disability pension in favour of a Sepoy who received gunshot injury during operation Rakshak in the Kargil Sector in 1996 and was discharged from army service on compassionate ground on 31.10.2004, that is before 2006. Therefore, in the light of the aforesaid pronouncements also, the applicant is entitled for disability pension.

13. For the reasons given above, the application is allowed. The applicant is entitled for 30 per cent disability pension, which shall be rounded off to 50 per cent according to the Govt. of India decision dated 31.01.2001. The applicant is also entitled to arrears of disability pension from the date, prior to three years from the date of filing the present T.A. along with interest at the rate of 12 per cent per annum. This order shall be implemented as early as possible preferably within a period of three months from the date of receipt of the copy of this order.

(Lt Gen Gautam Moorthy)
Member(Administrative)

(Justice N.K.Agarwal)
Member (Judicial)

Pkb

