

(SEE RULE 102(1))  
ARMED FORCES TRIBUNAL, KOLKATA BENCH  
APPLICATION NO. O.A. No. 170/2017

Dated the 16<sup>th</sup> May, 2018.

Coram : **Hon'ble Mr. Justice V. S. Ravi, Member (J)**  
**Hon'ble Lt Gen Gautam Moorthy, Member (A)**

APPLICANT (S)

IC-47353L Lt Col DEBASIS MUKHERJEE (Retd),  
son of Dinabandhu Mukherjee, presently residing  
at Flat No. 502, Block-B/3, Bhaskar Roy Enclave,  
Phase-II, AWHO Complex, VIP Road,  
Opp. to Haldiram, Kolkata – 700052.

Versus

RESPONDENT (S)

1. UNION OF INDIA  
Service through the Secretary, Ministry  
of Defence, South Block, New Delhi –  
110001 ;
2. The Secretary, Department of Ex-  
Servicemen Welfare & Pension,  
Ministry of Defence, South Block, New  
Delhi – 110011;
3. The Principal Controller of Defence  
Accounts (Pension), Draupadi Ghat,  
Allahabad – 211014, U.P.;
4. The Addl Dte Gen PS-4,  
AG's Branch, IHQ of MoD (Army), Plot  
No. 108 (West), Brassy Avenue, Church  
Road, New Delhi – 110001.

For the applicant(s)

: Mr. Aniruddha Datta

For the respondent(s)

: Mr. Tapas Kr. Chatterjee

**ORDER :**

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

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, praying for grant of Broad Banding benefit to the applicant. The applicant was commissioned in the Indian Army on 19.12.1987 and released from service on superannuation on 30.11.2013 (AN) in low medical category. The applicant is getting 40 per cent disability element of pension for life from 01.12.2013 vide Corrigendum PPO issued by PCDA(P), Allahabad, dated 25.03.2015 (Annexure-A/2).

2. Since it is a case of "broad-banding" from 40% to 50% and the documents annexed to the instant application are not refuted by the respondents, we proceed to dispose of the case after hearing both sides in full.

3. Heard learned counsel for the applicant and learned counsel for the respondents.
4. The learned counsel for the applicant referring to the Corrigendum PPO issued by the competent authority submits that since the applicant is already receiving disability element of pension at the rate of 40%, he is entitled to the benefit of "broad-banding" the same to 50% in terms of the order passed by the Hon'ble Supreme Court on 10.12.2014 in Civil Appeal No. 418 of 2012 (**Union of India & Ors. vs. Ram Avtar**). The learned counsel, therefore, submits that a direction needs to be issued to the respondents to grant benefit of broad banding of the disability element of pension from 40% to 50% with arrears and interest thereon.
5. The learned counsel for the respondents, on the other hand, referring to the policy decision of Govt. of India dated 31.01.2001, has submitted that since the applicant has been released on superannuation, he is not entitled to the benefit of "broad-banding". The learned counsel has further submitted that the said policy decision relates to grant of "broad-band" benefit to the persons who have been invalidated out from service.
6. We have considered the submissions advanced by the both parties.
7. It is not in dispute that the applicant was enrolled in Army service and released on superannuation in low medical category on 30.11.2013 on completion of about 26 years of colour service and he has been receiving the disability element of pension at the rate of 40% for life with effect from 01.12.2013, as it is evident from the Corrigendum PPO issued on 25.03.2015(Annexure- A-2).
8. The issue relating to the grant of rounding off benefit of the disability element of pension is no longer res-integra in view of the order passed by the Hon'ble Supreme Court in Ram Avtar (supra), whereby the Hon'ble Supreme Court has directed the respondents to grant the said benefit also to the personnel who have not only been invalidated out from service but to other categories also. The Govt. of India has also decided to implement the aforesaid direction of the Hon'ble Supreme Court to grant the benefit of "broad-banding" the disability element of pension to the Armed Forces personnel, who have retired or discharged on completion of the term of engagement with disability aggravated by or attributable to military service from the date mentioned in the respective Court orders, which has been communicated by the Under Secretary to Govt. of India, Ministry of Defence, Department of Ex-Servicemen Welfare D(Pension/Legal) vide letter P.No.3(11)2010-D Pen/Legal-Pt.V dated 18.04.2016 to the Chiefs of all three services. Relevant portions of the letter is set out below :

*"(a) The Hon'ble Supreme Court vide order dated 10.12.2014 dismissed more than 800 Civil Appeals tagged with Civil Appeal No. 418 of 2012 filed by the Union of India Vs. Ram Avtar challenging grant of broad banding of disability element by AFTs to Armed Force Personnel other than "Invalided out" from service. The Hon'ble Supreme Court ruled that an Armed Force Personnel retired on completion of tenure with disability*

*aggravated by or attributable to military service is eligible for broad banding of disability pension/element.*

*(b) Accordingly, approval of competent authority is hereby conveyed for implementation of Court/AFTs orders granting broad banding of disability element to an armed force personnel retired or discharged on completion of terms of engagement with disability aggravated by or attributable to military service from the date mentioned in respective court orders."*

9. That being the position, we are of the considered opinion that the applicant is entitled to the benefit of broad banding of the disability element of pension.

10. In view of the above, respondents are directed to pay the benefit of broad banding of the disability element of the pension to the applicant from 40% to 50%. The respondents are further directed to make payment of the arrears with effect from 01.12.2013 within four months from today, in default thereof, the arrears shall carry interest @ 8 per cent per annum till the date of actual payment is made.

11. The OA is allowed accordingly. No costs.

12. Learned counsel appearing for the respondents has made an oral prayer to grant leave to appeal to Hon'ble Supreme Court U/Section 31 of the AFT Act, 2007. Since the order does not involve any question of law having general public importance, the prayer for leave to appeal to the Hon'ble Supreme Court stands rejected.

13. Let a plain copy of this order, duly countersigned by the Tribunal Officer, be given to the parties after observance of requisite formalities.

(Lt Gen Gautam Moorthy)  
Member(Administrative)

(Justice V. S. Ravi)  
Member(Judicial)