

SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION NO. M.A. 123/2018

(Arising out of O. A. No. 26/2016 & M. A. No. 145/2016)

DATED : THIS

DAY OF MARCH, 2019

CORAM

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)

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

APPLICANT (S) : Chhathu Lal Yadav,
S/o Sri Kailash Yadav,
59, Deben Babu Raod,
Post Office – Kanchrapara
P.S. – Bijpur,
District – 24 Paraganas North,
Pin – 743 145

Versus

RESPONDENT(S) : (1) Union of India,
Service through the Secretary,
Ministry of Defence,
South Block,
New Delhi – 110 001

(2) Chief of the Army Staff,
Integrated Headquarters of
Ministry of Defence (Army)
DHQ PO, New Delhi – 110 011

(3) The Secretary,
Deaprtment of Ex-Servicemen Welfare,
5-A, South Block,
R. K. Puram, New Delhi – 110 011

(4) The Principal Controller of Defence
Accounts (Pension),
Draupadi Ghat, Allahabad, PIN – 211001

(5) The Officer-in-Charge
Army Medical Corps Records,
Lucknow, PIN – 900450, C/O 56 APO

Counsel for the Applicant(s) : Mr. Aniruddha Datta, Ld. Advocate

Counsel for the Respondent(s) : Mr. Mukesh Kumar Gupta, Ld. Adv.

ORDER

PER LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC, MEMBER (ADMINISTRATIVE)

1. This O.A. is filed under section 14 (4) of the AFT Act in which the applicant has prayed for declaration of his status as ex-serviceman and disability pension from his date of discharge i.e. 31 March 2014 at 50% (rounding off). He has subsequently filed two M.As.
2. In M.A. 145 of 2016 he has prayed that he be granted service element of disability pension and in the other M.A. i.e. M.A. 123 of 2018 he has prayed for extension of the broad banding element of disability pension from 40% to 50% from 1 April 2014, both prayers being mentioned in the O. A. also.
3. This is the second round of litigation. Earlier the applicant filed O.A. i.e. O.A. 32 of 2014 in which the applicant had prayed for condonation of shortfall of service for grant of service pension. The respondents have complied with our directions to consider this case for condonation of shortfall of service for grant of service pension, and rejected the applicant's plea on the grounds as he did not complete 15 years of service and had only completed 13 years 7 months and 16 days by a reasoned and speaking order dt 22 June 2015.

4. From the documents filed, it is seen that PPO has been issued (Page 6 of Supplementary Affidavit) granting him disability @ 40% for life. However, there is no mention of service element.

5. The respondents in their affidavit-in-opposition have affirmed that PCDA (P) has issued PPO dated 14 June 2016 granting disability element of disability pension to the applicant @ 40%.

6. The issue of granting service element of disability pension as well as rounding off is no longer res integra in view of a catena of judgments that have been issued. Primarily among them are : -

(a) Union of India & Others vs. Tarsem Singh 8 SCC (2008), Union of India & Others vs. Ram Avtar in Civil Appeal 418 of 2012 decided on 10.12.2014 as well as policy letters issued by Government of India (MoD), latest being letter No. P3(II) 2010-DPN/Legal – Part V, dated 18.04.2016.

(b) Supreme Court in Civil Appeal 9946 of 2016 arising out of Special Leave to Appeal (C) No. 3353/2012 Devender Singh vs. Union of India and others and larger Bench of AFT in O.A. 1439 of 2016 passed on 01.12.2017.

7. Thus there is no doubt that the applicant is entitled to broad banding of the disability element of disability pension from 40% to 50% w.e.f. 1 April 2014. He is also entitled to service element of disability pension. Arrears to be paid to the applicant within 3 months after receipt of this order failing which simple interest of 8% will be paid.

8. In so far as the issue of grant of Ex-Serviceman status to the applicant is concerned, It has been clarified in the **Compendium on Reservation, Concessions and Relaxations for Ex-servicemen in Central Government Services issued vide Govt of India, Ministry of Personnel, Public Grievances and Pensions, Dept of Personnel and Training**, the definition of ex-servicemen in relevant paragraph is reproduced as under:-

“ 2. Definition of Ex-servicemen”

The ex-servicemen (Re-employment in Central services and Posts (Rules) 1979, as amended from time to time defines an ex-serviceman as a person;

who has served in any rank whether as combatant or non-combatant in the regular Army, Navy and Air Force of the Indian Union and;

(a) *who has either been retired or relieved or discharged from such service or discharged from such service whether at his own request or being relieved by the employer after earning his/her pension; or* (emphasis supplied)

(b) *who has been relieved from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or*

(c) *who has been released from such service as a result of reduction of establishment.*

ii) XXXXXXXXXXXXXXXXXXXXXXXXXX

iii) XXXXXXXXXXXXXXXXXXXXXXXXXX

9. Thus, it is evident that since the applicant has not been granted pensions, the applicant cannot be granted the status of of ex-serviceman.

10. Thus M. A. No. 145 of 2016 and M. A. 123 of 2018 are allowed.

11. O. A. 26 of 2016 is partially allowed only to the extent of granting service element of Disability Pension as well as rounding off Disability Element from 40% to 50%.

12. The respondents had made a prayer at the time of reserving the judgment that if they receive an adverse order in this case, they may be permitted to appeal u/s 31 of the AFT Act to the Hon'ble Supreme Court. As there is no point of law of General Public importance, the appeal is not allowed.

13. No order as to cost.

14. Let a plain copy of this order duly counter-signed by the Tribunal Officer be supplied to the parties after observance upon usual formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)

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