

**ARMED FORCES TRIBUNAL  
REGIONAL BENCH, KOLKATA**

**O. A. - 24/2018**

IC-45474N Col (TS) Mrinal Kanti Roy (Retd)  
HQ 23 Infantry Division  
PIN – 908423, c/o 56 APO  
(Flat No. – 301, Sector – II, Block No. – 1, 3<sup>rd</sup> Floor)  
National Games Housing Complex, Hotwar, Khelgaon  
Ranchi (Jharkhand) - 835217

.....Applicant

**Versus**

1. The Union of India  
Services through Secretary, Ministry of Defence  
South Block, DHQ, PO – New Delhi – 110011

.....Respondents

2. The Chief of the Army Staff  
Through Adjutant General  
Integrated HQ of MoD (Army)  
South Block, DHQ, PO, New Delhi – 110011

3. Secretary, Department of Ex-Servicemen Welfare & Pensions  
Ministry of Defence, South Block, New Delhi – 110011

4. Additional Director General of Manpower (P&P) (MP-6(B))  
Adjutant General's Branch, Integrated HQ of MoD (Army)  
West Block – III, RK Puram, New Delhi – 110066

5. \*Principal Controller of Defence Accounts (Pensions)  
DrapaudiGhat, Allahabad (UP) – 211014

For the Applicant : Maj Gen SK Choudhury (Retd), Ld. Advocate

For the Respondent : Mr. Debu Chowdhury, Ld. Advocate

**CORAM:**

HON'BLE MS JUSTICE ANJANA MISHRA, MEMBER (J)  
HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)

**O R D E R**

04.05.2022

1. The present O.A. has been filed in terms of Section 14 of the Armed Forces Tribunal Act, 2007 praying for the following reliefs : -

(a) To quash and set aside Addl Dte Gen Personnel Services letter No.

B/38046A/179/2017/AG/PS-4(2<sup>nd</sup> Appeal) dated 14<sup>th</sup> November, 2007

(Page-19 of the O.A.) whereby the Enhanced Disability Pension claimed by the applicant has been rejected.

(b) Issue directions to the Respondent No. 1 to grant Enhanced Disability Pension of 60 % for life since the date of release i.e., 31<sup>st</sup> July, 2015 including arrears along with 12 % of interest.

(c) To issue directions to the Respondent No. 1 to grant Enhanced Disability Pension with rounding off the benefits to 75 % as per Para 98 (c) of the Pensions Regulations for the Army, 1982.

2. Brief facts of the case, as enunciated by the Applicant are that the Applicant was commissioned in the Regiment of Artillery on 09<sup>th</sup> March, 1985 and retired on 31<sup>st</sup> July, 2015 in the rank of Colonel (Time Scale) after more than 30 years of Commissioned Service. The Applicant he is a former Army Officer (Artillery), Release Medical Board was held at Military Hospital, Namkum, Ranchi on 21<sup>st</sup> February, 2015 and the Applicant was placed in Medical Category S1H1A1PeE2 (P-2 for **PRIMARY HYPERTENSION** and **E-2 for Retro Bulbar Neuritis, Left Eye (effects of)**. The disease of **Retro Bulbar Neuritis, Left eye, (effect of)** was declared Attributable to Military Service). However, the disease **PRIMARY HYPERTENSION** was Neither Attributable nor Aggravated by Military Service (NANA). The percentage of Disability for Primary Hypertension and Retro Bulbar Neuritis, Left eye, (effects of) was assessed as 30 % and 40 % for life respectively. Although the Composite Disability was assessed for 60 % for life, yet the net amount qualifying for Disability Pension was assessed as 40 % for life by a Speaking Order in Second Appeal vide Addl Dte Gen Personnel Services, Adjutant General's Branch, IHQ of MoD (Army) letter No. B/38046A/179/2017/AG/PS-4(2<sup>nd</sup> Appeal) dated 14<sup>th</sup> November, 2007 (Page-19 of the O.A.). The Applicant retired from active Army Service on 31<sup>st</sup> July, 2015. He was granted 40 % Disability for Life by ADGPS letter No. 13015/IC-45474N/A-15/MP 6(B)/230/2015AG/PS-4) Imp-II dated on 12<sup>th</sup> November, 2015, by the Competent Authority. The Applicant submitted First and Second Appeal for

enhancement of Disability Pension from 40 % to 60 % before ACFA and SACP respectively. Both the applications were rejected without any valid reason. Hence, the present O. A. has been filed praying for grant of Disability Pension @ 60 % for life to be rounded off to 75 %.

3. The Respondent has filed an Affidavit-in-Opposition on 11<sup>th</sup> June, 2021 stating that Disability Pension are governed by eligibility conditions enumerated in Regulations 81 of Pension Regulations, 2008; which stipulates that unless otherwise specifically provided, the Disability Pension consisting of Service Elements and Disability Element of Pension is granted to an officer who is invalided out of service on account which is either Attributable to or Aggravated by Military Service in Non-Battle Casualty Cases and the Disability is assessed to 20 % or more. An Officer who is in Low Medical Category at the time of retirement / invalidment is to appear before a Release Medical Board before his release from service on superannuation of Invalidating Medical Board (IMB) in case his Medical condition does not warrant his retention in service upto the age of superannuation.

4. At the time of retirement, Applicant was in Low Medical Category and was brought before the Release Medical Board on 21<sup>st</sup> February, 2015, which views his Disability as under : -

Sl. No.	Disability	Attributable to Mil Service	Aggravated by Mil Service	% of disability	Remarks
(a)	PRIMARY HYPERTENSION	No	No	30 %	40 % for life
(b)	RETRO BULBAR NEURITIS LEFT EYE (EFFECTS OF)	Yes	No	40 %	

5. The Competent Authority after examination of the case of the Applicant recorded Disability as Attributable to Military Service with degree of Disablement @ 40 % for life and Disability as Neither Attributable to / Aggravated by Military Service (NANA) and accorded approval for grant of Disability Element @ 40 % for life from the date of superannuation.

Accordingly, the Second Appeal filed on 23<sup>rd</sup> May, 2017 was adjudicated and rejected by the 2<sup>nd</sup> Appellate Committee dated 14<sup>th</sup> November, 2017 (Page 19 of O. A.) without any valid reasons. Hence, the present O. A. has been filed praying for grant of Disability Pension @ 60% for life to be rounded off to 75%.

6. The Respondents states that the Officer being NANA case hence, in terms of Para 43, Chapter VI, GMO 2002, relief claimed by the Applicant is not admissible. The benefit of Broad Banding from 40 % to 50 % can be given to the applicant w.e.f. from January 01, 2016 for Disability RETRO BULBAR NEURITIS LEFT EYE (EFFECTS OF) in terms of GoI, MoD, Policy dated 05<sup>th</sup> September, 2017.

7. The Applicant filed his Affidavit-in-Opposition on 01<sup>st</sup> September, 2021 and controverting the averment made by the Respondents in their Affidavits and states that opinion of the RMB that **HYPERTENSION** is NANA and is illogical. In this connection the Applicant has placed reliance in cases of **Dharamvir Singh Vs. UoI & Ors, Civil Appeal No. 4949 of 2013 (arising out of SLP No. 6940 of 2010 and UOI & Anr. Vs. Rajveer Singh in Civil Appeal No. 2904 of 2011.**

8. It shall be appropriate to consider the Law with regard to payment of Disability Pension and its rounding off. The proposition of Law with regard to Disability Pension has already been settled by the Hon'ble Supreme Court in case of **Dharamvir Singh Vs. UoI and ORs reported in (2013) 7 SCC 316, Sukhvinder Singh Vs. UoI reported in (2014) SCC 364 and Veerpal Singh Vs. MoD reported in (2013) 8 SCC 83** and is no longer *res integra*. It is not understood why this relief is being contested by the Respondents.

9. In fine, we direct the following : -

(a) The impugned Order dated 14<sup>th</sup> November, 2017 and intimated vide IHQ of MoD (Army) letter No. 13015/IC-45474N/A-15/MP-6 (B) dated 22<sup>nd</sup> November, 2017 to the extent it denies the Disability Pension to the

Applicant is quashed and set aside. The applicant shall be entitled to Disability Pension to the extent of 60 % for life which is round off to 75 % along with consequential benefits with arrears since the date of his superannuation i.e., 31<sup>st</sup> July, 2015.

(b) The arrears of Disability Pension shall be paid to the Applicant within a period of four months from the date of receipt of this Order; failing which the Applicant shall be entitled to interest on the amount due in pursuance of the above from the date of release till date of payment @ 8 % p.a. However, the arrear pension is restricted to a period of three years prior to the date of filing of the O. A. i.e. on 05.03.2018.

10. Before departing, we make it abundantly clear that if in the case of the final outcome of the case of Uol Vs. Ex-Sgt Girish Kumar, pending before the Hon'ble Apex Court is favorable to the Applicant it shall be implemented and arrears will be paid to the applicant by the Respondents from the date made applicable on the Broad Banding of Disability Element of Disability Pension by the Hon'ble Apex Court.

11. O. A. is accordingly allowed.

12. There will be no order as to costs.

(LT GEN BOBBY CHERIAN MATHEWS)  
MEMBER (A)

(JUSTICE ANJANA MISHRA)  
MEMBER (J)

MC