

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA.

R.A. NO. 2/2022 and R.A. NO. 2/2023.

Thursday, the 11th day of January 2024 at 2.30 PM.

In R.A. No. 2/2022(Arose from OA 100/2019 with MA 77/2019).

Ex Sep Sunil Kumar ... Review applicant.

-Vs-

Union of India and others

... Respondents

Present:

Mr Aniruddha Datta, Advocate, for the petitioner.

Mr Daya Shankar Mishra, Sr. PC, for respondents.

In R.A. No. 2/2023 with MA 5/2023(Arose from OA 100/2019 with MA 77/2019)..

Union of India and others. ... Review applicants.

-Vs-

Ex Sep Sunil Kumar ... Respondent.

Present:

Mr Daya Shankar Mishra, Sr. PC, for the petitioners.

Mr Aniruddha Datta, Advocate, for the respondent.

Coram.

JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).
LT. GENERAL(RTD.) BOBBY CHERIAN MATHEWS, MEMBER(ADMINISTRATIVE).
(Through videoconference).

ORDER(ORAL).

JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).

This order shall dispose of both the review applications filed by the parties on both sides in OA No.100/2019 against the order dated 05.05.2022 passed by a Bench of this Tribunal, of which one of the Members was one of us(Lt Gen(Rtd) Bobby Cherian Mathews, Member(J). Now on the resignation of one of the Members of the Bench, Mrs. Justice Anjana Mishra, the same Bench is not available, therefore both the petitions have been taken up for hearing by this specially-constituted Bench through videoconferencing.

(2) Perusal of the order sought to be reviewed reveals that the OA has been allowed to the extent of granting the benefit of rounding-off to 50% from 30% with effect from 01.06.2006, the date of discharge of the applicant voluntarily from service, but denied his claim for service pension on the grounds inter alia that he has sought voluntary retirement in terms of Para 183(a) of the Pension Regulations for the Army, 1961(Part I) and having not been qualified for the same he is not entitled thereto.

(3) The grouse of the applicant however is that notwithstanding he has sought voluntary retirement and has been granted the disability element in terms of the Circular of the Govt. of India, Ministry of Defence, Department of Ex-servicemen Welfare dated 20.09.2012, he is entitled to the grant of service element also.

(4) Now coming to the review petition filed by the Union of India, the complaint is that though the claim of the applicant for the grant of disability pension has been declined by the High Court of Judicature at Patna twice and it is the respondent-Union of India that on its own has granted him disability element consequent upon the Circular(supra) he is not entitled to the rounding-off benefit.

(5) We have heard Mr Aniruddha Datta, learned counsel appearing on behalf of the original applicant. Also heard Mr Daya Shankar Mishra, learned Sr. PC, appearing on behalf of respondents through videoconference.

(6) The respondent-Union of India has sought review of the order dated 05.05.2022 passed in OA No.100/2019 on condonation of delay. The delay of 5 months and 9 days occurred in filing the review petition stands satisfactorily explained and even not inordinate also. The same is accordingly ordered to be condoned.

(7) However, coming to the merits of the review application(RA 2/2022) Mr Datta has placed reliance on the orders passed by the Hon'ble Supreme Court in Civil Appeal No.418/2012 titled Union of India and others vs Ram Avatar, and Civil Appeal No.9946/2012 titled Dalvir Singh vs Union of India and others to submit that as per the law so laid down even a soldier who seeks voluntary discharge from service on account of being unfit due to the disability he incurred upon is not only entitled to the grant of disability element but also the service element. The present is a case of rejection of the claim of the applicant for the grant of disability pension by respondents. The

High Court of Judicature at Patna twice has heavily weighed with the Bench while rejecting the claim of the applicant for the grant of service element. The disability element has been granted by the respondent-Union of India itself. In the OA thereby prayer was to grant the benefit of broad-banding.

(8) Now coming to the review application filed by the Union of India the grounds on which the order passed in the OA has been sought to be reviewed are neither legally nor factually sustainable for the simple reason that once the respondent-Union of India has granted disability element of disability pension to the applicant consequent upon its own policy decision contained in the Circular (supra), the applicant is entitled to the benefit of broad-banding also in terms of the law laid down by the Hon'ble Supreme Court in Ram Avatar's case(supra) cited and its connected matters. Otherwise also, the respondent-Union of India has now taken a policy decision to grant the benefit of rounding-off the disability to a disabled soldier from the due date which, in the case in hand, is 01.06.2006.

(9) We therefore do not find any reason to interfere with the order sought to be reviewed. In our considered opinion there is neither any mistake nor error apparent on the face of record or sufficient reason shown to take in its sweep a ground analogous with those specified in the statutory provisions warranting review of an order and that too when this Bench has dismissed the OA after taking into consideration the given facts and circumstances and also the law laid down by the Hon'ble Supreme Court by way of various judicial pronouncements.

(10) As a matter of fact, the original applicant and for that matter the respondent-Union of India under the garb of the review applications wanted this Tribunal to rehear the matter which is not legally permissible.

(11) In view of the above both the review applications fail and the same are accordingly dismissed. Miscellaneous application(s) if any pending will also stand disposed of. However, with liberty to the original applicant to resort to the remedy if any available to him in accordance with law for redressal of his grievances if any.

LT. GENERAL BOBBY CHERIAN MATHEWS,
MEMBER(ADMINISTRATION).

JUSTICE DHARAM CHAND CHAUDHARY,
MEMBER(JUDICIAL).

Na/