

Form No.4
 [(SEE RULE 11(1))]
 IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA
ORDER SHEET

APPLICATION No. O.A. No. 75/2017

APPLICANT (S)	EX NAIK BIJAY PADA SARKAR
RESPONDENT (S)	UNION OF INDIA & OTHERS
Legal Practitioner of applicant	Legal Practitioner for Respondent (s)
Miss Manika Roy	Mr. Tapas Kr Chatterjee

<u>ORDERS OF THE TRIBUNAL</u>	
<u>Order Serial Number :</u>	<u>07</u> <u>Dated : 27-10-2017</u>
	<p>Coram : Hon'ble Mr. Justice S.V.S. Rathore, Member (J) Hon'ble Lt Gen Gautam Moorthy, Member (A)</p> <p>Present : Miss Manika Roy, learned advocate for the applicant and Mr. Tapas Kr Chatterjee, learned counsel for the respondents along with Maj Deepali Malhotra, representative of respondents.</p> <p>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 enrolled in the Indian Army on 14.12.1978. He superannuated on 01 January 2001 in low medical category P2(P). The applicant is getting 30 per cent disability element of pension for life by PCDA(P), Allahabad vide their PPO at Annexure – A/2 to the O.A.</p> <p>2. Since it is a case of "broad-banding" from 30% to 50% and the documents annexed to the instant application are not refuted by the respondents, we do not feel the necessity of even having a counter affidavit on record as it would unnecessarily delay the disposal of the instant matter, which is not in the interest of justice. Hence, We proceed to dispose of the case at the admission stage itself.</p> <p>3. Heard Miss Manika Roy, learned counsel for the applicant and Mr. Tapas Kr. Chatterjee learned counsel for the respondents assisted by OIC, Legal Cell.</p> <p>4. The learned counsel for the applicant referring to the PPO issued by the competent authority submits that since the applicant is receiving disability element of pension at the</p>

rate of 30%, 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 Avatar**). 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 30% to 50% with arrears and interest thereon.

5. The learned counsel appearing 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 not been invalidated out from service, 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 learned counsel for the parties.

7. It is not in dispute that the applicant was enrolled in Army service and superannuated in low medical category P2(P) on 01.01.2001 on completion of about 22 years of colour service and he has been receiving the disability element of pension at the rate of 30% for life with effect from the date of his superannuation, as it is evident from the PPO issued by the competent authority (Annexure-A/2). 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 Avatar (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."

8. 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.

9. In view of the above, respondents are directed to pay the benefit of broad banding of the disability element of the pension of the applicant at the rate of 50%. Insofar as the arrears is concerned the Hon'ble Supreme Court in Civil Appeal No. 9946/2016 arising out of Special Leave to Appeal (C) No. 3353/2012 (**Davinder Singh Vs. Union of India & Ors.**) granted the leave and ordered :-

"..... From a reading of the order passed by the Tribunal in Jai Singh's case supra, it is evident that the Tribunal had while allowing the batch of petitions held the appellants therein, who were retirees prior to 01.01.1996, to the benefit of rounding off of disability pension as per letter dated 31.01.2001. The benefit was given w.e.f. 01.01.1996. Arrears w.e.f. 01.01.1996 with interest @ 8% p.a. were also allowed. It is argued by learned counsel of the appellant that the arrears w.e.f. 01.01.1996 having been allowed by the High Court in the relied upon judgement

with interest @ 8% p.a., there was no reason for rounding the said period to three years only immediately prior to the filing of the petition in the case of the appellant. It is submitted that this court having already affirmed the view taken in Jaisingh's case, similar relief could be granted to the appellant also. We find merit in that submission.

.....That being so and the order passed by the Tribunal in Jaisingh's case and batch of cases having been affirmed by this court, we see no distinction between the cases dealt with by the Tribunal in that batch and the appellant's case to warrant a differential treatment to him in the matter of grant of arrears. We accordingly allow this appeal and modify the order passed by the Tribunal to the extent that the appellant shall also on the analogy of the order passed by the tribunal in Jai Singh's case (supra) be entitled to arrears payable to him by reason of rounding off of disability pension w.e.f. 01.01.1996 with interest @ 8% p.a. subject to adjustment of any amount already received by him for the said period."

10. The respondents are further directed to make payment of the arrears w.e.f. 01.01.2001 that is the date of retirement 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)
pkb

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