

SEE RULE 102(1))

ARMED FORCES TRIBUNAL , KOLKATA BENCH

APPLICATION NO : O. A NO. 5 OF 2016

ON THIS 29<sup>TH</sup> DAY OF FEBRUARY, 2016

CORAM :HON'BLE JUSTICE N.K. AGARWAL , MEMBER (JUDICIAL)  
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

Ananda Gopal Saha, S/o Late Purna Chandra Saha,  
Ex-JC 370620M, Hony/Subedar Major, Indian Armed  
Forces Army (Corps of Signals), presently residing  
at Navin Market, Mira Bazar, Plussey, Dist. Nadia,  
West Bengal, Pin – 741 156

.....Applicant

-VS-

1. Union of India service through the Secretary, M/o Defence  
No.1 (194)2009/D (Pen & Appeal) Sena Bhawan, DHQPO  
New Delhi-1100011
2. The Director (Legal Section), Army HQ, AG/P-5-5  
Room No.18, Plot No.108 (West)  
L-Block, Church Road, New Delhi – 110 001
3. Addl Director General Personnel Services  
Adjutant General Branch, Integrated HQ of MoD (Army)  
DHQ PO, New Delhi – 110 011
4. The Director General of Signals (Signal – 4), General  
Staff Branch, Integrated HQ of Ministry of Defence (Army)  
DHQ PO, New Delhi – 110 011
5. The Director General of Armed Forces Medical Services,  
Office of the DGA FMS/MA (Pen), Room No.132, L-Block  
MoD, New Delhi – 110 001
6. The Principal Controller of Defence Accounts(Pen),  
Draupadighat, Allahabad, Pin – 211 014
7. Deputy DADA, Draupadighat, Allahabad 211014
8. The Senior Record Officer, OIC Records, Signal Records  
(Corps of Signals), Jabbalpur (MP) PIN 482001
9. The OIC NER Group Signal Records (Corps of Signals)  
Jabbalpur (MP) PIN – 482 001

.....Respondents

For the Applicant : Mr. Dilip Kumar Maity, Advocate

For the respondents : Mr. Anand Bhandari, Advocate

**ORDER**

**Per Mr. Justice N.K. Agarwal, Member(J)**

The short question involved in this petition is that whether or not rounding of benefit of disability element is applicable to those personnel who have been invalidated out of service on medical ground on completion of terms of engagement.

2. The applicant was enrolled in the Army on 4<sup>th</sup> September, 1974 and discharged from service 29-2-2004 under Army Rule 13(3) item I(i) (a) read in conjunction with Sub Rule 2A on completion of limit/age. It is also not in dispute that he was discharged from service on medical ground and his disability was assessed as 30% and accordingly he is getting disability pension with effect from 1<sup>st</sup> March, 2004 till date.

3. The only grievance of the applicant is that according to para 7.2 of letter No.1(2)/97/D (Pen-C) dated 31-01-2001 of MoD and Circular No.529 dated 13-10-2014, he is entitled for the benefit of Board Banding i.e. Rounding off disability i.e. from 30% to 50%. On the contrary, according to the respondents as the applicant had been discharged from

service on completion of terms of engagement, he is not entitled for rounding off benefit of disability element (i.e. from 30% to 50%).

4. The learned counsel for the applicant submitted that consequent upon issuance of letter dated 31-1-2001, benefit of Board Banding, i.e. rounding off disability, 50% (for disability less than 50%), 75% (for disability from 50% to 75%) and 100% (for disability from 76% to 100%) provision has been made for those pensioners who have been invalidated out from the service on medical ground attributable to or aggravated by military service. However, the respondents have wrongly denied the above benefit to the applicant vide their letter impugned dated 12-11-2015.

5. The learned counsel for the respondents supported the letter/order so impugned.

6. We have heard the learned counsel for the parties and perused the records.

7. Undisputedly the applicant was invalidated out of service on medical ground attributable to military service and his

disability pension was assessed as 30%, though on completion of terms of engagement. It is also not in dispute that he is getting pension considering his disability as 30%.

8. In our opinion, the denial of rounding off benefit to the applicant by the respondents on the ground of letter so impugned is *per se* illegal and contrary to their own rules.

9. As per Regulation 53 of Pension Regulations for Army, 1961, an officer retired on completion of tenure or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by service medical authorities, shall be deemed to have been invalidated out of service and shall be granted disability pension from the date of retirement, if his accepted degree of disability is 20% or more and service element if the degree of disability is less than 20%, whereas as per para 7.2 of the instructions dated 31-1-2001 and also according to the subsequent circular where the disability assessed is more than 20%, but less than 50% then the same should be treated as 50%.

10. Once a person becomes entitled for disability pension then by necessary implication as per the Circular issued by the respondents as well as in the light of Judgement of Hon'ble Supreme Court in the case of ***K.J.S. Buttar v. Union of India & another [(2011) 11 Supreme Court Cases 429]*** he would be entitled for rounding off benefit irrespective of the fact that he had been invalidated out of service on medical ground before or after completion of terms of engagement.

11. The question involved in the petition is therefore answered in favour of the applicant.

12. In the result, the petition is allowed. We hold that the applicant is entitled to get the disability element of the disability pension with effect from 1<sup>st</sup> March, 2004. The disability element of the disability pension, i.e. 50% instead of 30% and is entitled get the arrears w.e.f. 1-3-2004 with an interest of 8% per annum.

13. The orders shall be implemented within a period of three months.

14. No order as to costs.

15. All the case records may be returned to the respondents observing all the usual formalities.

16. A plain copy of the order to be given both the parties observing all the usual formalities.

(Lt Gen Gautam Moorthy)  
Member(Administrative)

(Justice N.K. Agarwal)  
Member (Judicial)

tkb