

ARMED FORCES TRIBUNAL
REGIONAL BENCH, KOLKATA

52. OA-53/2021

NO. 1624998 R Ex NAM-I Tarapada Kar

..... Applicant.

Versus

Union of India & Ors.

..... Respondents.

For the Applicant : Mr. Aniruddha Datta, 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
02.05.22

1. The present O.A. has been filed by the Applicant praying for granting of the benefit of Broad Banding of Disability Element of Disability Pension to the Applicant from 60% to 75% w.e.f. 10th March, 2003 for life.

2. Brief facts of the case, as enunciated by the Applicant are that the Applicant was enrolled in the Indian Navy as a Sailor on 06th July, 1985. During his service tenure, the Applicant was posted to various Naval Establishments and Ships across India. On 29th November, 1988, while the Applicant was performing his duties in his unit below a Naval Aircraft, due to mechanical failure, its defective under carriage fell on him leading to severe fracture on his vertebrae. The Applicant was diagnosed to suffering from disability namely FRACTURE VERTEBRAE L3 & L4. He underwent treatment for the said injury and he was invalided out from Naval Services in the rank of NAM-I from 17th September, 1991 having been placed in Permanent LMC S5A5. The Release Medical Board (RMB) of the Applicant held his disability attributable to Naval Service. Copy of the Applicant's Service Discharge Book is at Annexure – A – 1.

3. Subsequently, since the injury of the Applicant was assessed to be attributable to Naval Service upon invalidation was granted Disability Pension wef 18th September, 1991 for life vide PPO No. 09/97/B/II/0021/1992 dated 24th September,

1992 and his Disability Element of Pension was sanctioned wef 18th September, 1991 to 06th August, 1996 vide PPO No. 09/97/B/D/0126/1992 dated 24th September, 1992. The Disability Pension of the Applicant was increased from time to time. However, the Applicant received a copy of letter No. DP/D/RA/162498 dated 22nd April, 2003 issued from the O/O the Respondent No.3 i.e, The Commodore, Bureau of Sailors, Cheetah Camp, Mankhurd, Mumbai where from he came to know that the Treasury Officer of Mayurbhanj, Treasury Office, Orissa, forwarded Applicant's Original PPO bearing No. 09/97/B/D/0203/2003 dated 31st March, 2003 whereby the Applicant was granted the Disability Pension @ Rs. 930/- per month w.e.f. 10th March, 2003 for life for his 60% Disability as assessed by RSMB vide letter at Annexure-1-3 of the O. A. No. 53/2021. The Applicant on being enlightened, filed an application to the Naval Pension Office at Mumbai on 29th January, 2020 and 25th January, 2021 for re-computation of his Disability Pension after Broad Banding the percentage of his Disability Pension from present 60% to 75%. But, no reply has been received from the Authority till date. In this regard, the applicant has referred to the Circular No. 1(2)/97/D(Pen-C) issued by the Ministry of Defence, Gol dated 31.01.2001 and the Order of the Hon'ble Supreme Court passed in Civil Appeal No. 418 of 2012 (UoI & Ors Vs Ram Avtar dated 10.12.2014) in support of his claim for rounding off his Disability Element of Disability Pension from 60 % to 75% for life w.e.f. 10th March, 2003. Being aggrieved by the non action of the Respondents, the Applicant has filed the present O. A. praying for Board Banding of his Disability Element of Disability Pension from 60% to 75% w.e.f. 10th March, 2003.

4. We have heard Mr. Aniruddha Datta, Ld. Counsel for the Applicant and Mr. Debu Chowdhury, Ld. Counsel for the Respondents and perused the material placed on record. The main issue for consideration is whether the Applicant is entitled to rounding off the benefits of Disability Element of Disability Pension from present 60 % to 75 % wef 10th March, 2003.

5. The issue relating to the grant of Broad Banding is no longer *res integra* in view of the Order passed by the Hon'ble Supreme Court in Ram Avatar (Supra) passed in Civil Appeal No. 418 of 2012 dated 10th December, 2014, wherein it is held that the Armed Forces Personnel with Disability Aggravated by or Attributable to Military Services are eligible for Broad Banding of Disability Pension / Disability Element of Pension.

6. On the issue of entitlement of arrears relating to old cases, the Hon'ble Supreme Court in the case of Uol Vs. Tarsem Singh reported in 2008 (8) SCC 648 decreed as under : -

"6. In this case, delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing the payment of arrears relating to 16 years, and that to with interest. It ought to have been restricted the relief relating to arrears to only three years before the date of Writ Petition or from the date of demand to date of Writ Petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."

7. Having scrutinized the material placed on record, it is clear that the Applicant is entitled to Broad Banding benefits from 60 % to 75 % wef 10th March, 2003. However, the Respondents have already granted Broad Banding Benefits of Disability Element of Disability Pension to the Applicant @ 60 for life wef 10th March, 2003 as assessed by the RSMB vide letter No. DP/D/RA/162498 dated 22nd April, 2003 and Corrigendum PPO No. 09/97/B/D/0203/2003 dated 31st March, 2003 (Annexure – A – 3 of the O. A.).

8. The Applicant is also entitled to the arrears of Disability Element of Disability Pension restricted to three years prior to the date of filing this O. A. i.e., 07th September, 2021.

9. 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 favourable 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.



10. Accordingly, this O. A. Is allowed. The Applicant shall be entitled to Broad Banding of Disability Element of Disability Pension from 60 % to 75 % along with arrears w.e.f. 10th March, 2003. Let arrears of Disability Pension 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 @ 08 % till the date of payment.

11. No order as to costs.

**(BOBBY CHERIAN MATHEWS)
MEMBER (ADMINISTRATIVE)**

**(ANJANA MISHRA)
MEMBER (JUDICIAL)**

MC