

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No. 161 of 2016

Friday, the 2nd day of June, 2017

THE HONOURABLE MR. JUSTICE BABU MATHEW P. JOSEPH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER - ADMINISTRATIVE)

SL 4065L

Lt Col Prem Singh (Retd) aged about 59 years
Plot No.3.6, 1st Main Road,
Alamelupuram
Madambakkam,
Chennai 600 126.

.. Applicant

By Legal Practitioner:
Shri. B.A.Thayalan

vs.

1. Union of India, rep. by
The Secretary
Ministry of Defence
South Block, New Delhi-110 001.
2. The Chief of Army Staff
Army Headquarters.
South Block, New Delhi -110 001.
3. The Adjutant General's Branch,
Additional Directorate General-Personnel Services,
Integrated HQrs of MoD (Army)
Plot No.108 (West) Brassy Avenue,
Church Road, New Delhi 110 001.

4. The Principal Controller of Defence Accounts (Pensions)
Draupadi Ghat,
Allahabad, UP State.211 014.

... Respondents

By Shri.G.Venkatesan, CGC

ORDER

LT GEN K.SURENDRA NATH, MEMBER (A)

The applicant, Lt.Col.Prem Singh (Retd) has filed this application praying to declare Regulation 37 (b) as unconstitutional and ultra vires, consequently to set aside the impugned order of the 3rd respondent and to direct the respondents to grant disability pension at 20% for life duly broadbanded at 50% for life with effect from the date of retirement i.e.01.01.2014.

2. Briefly, the applicant states that he was initially enrolled in the Indian Army on 30.06.1976 and thereafter, he was commissioned as an officer on 17.04.1993 and he retired from Army service in the rank of Lt Colonel on superannuation on 31.12.2013. At the time of retirement he was suffering from IDs, i) "*Cervical Spondylosis*" (ii) "*Obesity with Hyper Dislipedemia*", (iii) "*Diabetes Mellitus type II*" and (iv) "*CAD unstable Angina Post DES Angioplasty*". The Release Medical Board (RMB) held at the time of his retirement from the service, opined that the said first ID, i.e. "*Cervical Spondylosis*" was aggravated by military service and assessed the degree of

disability to be 20% for life. The remaining IDs were held to be neither attributable to nor aggravated by the military service. Accordingly, he was granted disability pension for the said disability at 20% for life. However, the said disability element of pension assessed at 20% was not broadbanded from 20% to 50% in accordance with Para 7.2 of Government of India's letter dated 31.01.2001. The applicant would submit that he made an appeal on 06.03.2015 to the third respondent, the competent authority seeking broadbanding benefits, however his claim was rejected. Therefore, the applicant filed the present Original Application.

3. Respondents have filed reply statement and they do not dispute the facts that the applicant was commissioned in the Army on 17.04.1993 and retired on superannuation on 31.12.2013 and the Release Medical Board held at the time of retirement opined that the ID "*Cervical Spondylosis*" was aggravated by military service and assessed the degree of disability at 20% for life and the applicant preferred first appeal and the Medical Board opined that ID, "*Cervical Spondylosis*" was aggravated by military service and assessed the degree of disability at 20% for life and other IDs being NANA. They would further submit that the applicant is not entitled to rounding off since he retired on superannuation and is not a case of invalidation. The broadbanding/rounding off is applicable only to those who were invalided out of service on medical grounds before completion of terms of engagement.

Respondents would, therefore, pray that the application may be dismissed as devoid of merits.

4. We heard the arguments advanced by the learned counsel for the applicant. Captain Tarun Kalra, represents the respondents. We have also perused the material documents placed before us, including the Medical Board Proceedings.

5. From the documents placed before us, we note that the applicant has been granted disability element of pension for the ID "*Cervical Spondylosis*" at 20% for life with effect from his date of retirement i.e.01.01.2014. The only issue of contention in this case is whether the applicant is entitled to broadbanding benefits in accordance with Para 7.2 of Government of India letter dated 31.01.2001, and Pension Regulation for the Army 2008 being a person who was discharged on superannuation, after 01.07.2008.

6. The issue involved in this case is no more res integra in the light of the Honourable Supreme Court's Judgment in the case of *Union of India and Ors Vs. Ram Avtar and Ors* (Civil Appeal No.418 of 2012, dated 10.12.2014), wherein it was held that personnel who have retired /discharged/superannuated on completion of service are also entitled to benefits of rounding off/broadbanding of disability element of pension. Following the judgment of the Honourable Supreme Court (Supra), this Bench, in the case of *V.Subramani Vs. Union of India and Ors.*, (O.A.No.11

of 2016 dated 02.03.2017) had held that interdiction in Regulations 37 (b) and 53 (b) of Pension Regulations for the Army 2008, is no more relevant and granted benefits of broadbanding to the applicant who had retired after 01.07.2008 in terms of para 7.2 of Government of India's letter dated 31.01.2001 and Regulation 94 (c) of ibid Pension Regulations, 2008. The Honourable Kochi Bench of Armed Forces Tribunal in the case of Col *Yohannan Vs. Union of India & Ors., (O.A.198 of 2016 dated 13.02.2017)* also took a similar view and held that personnel who have retired after 01.07.2008 on completion of terms and conditions of service are also entitled to broadbanding of their disability element of pension. Further, we note that the Government of India also has accepted granting of broadbanding of disability of pension to similarly placed persons following the recommendations of VII Central Pay Commission.

7. In view of the above, we are inclined to agree with the learned counsel for the applicant that the applicant is entitled to broadbanding of disability pension from 20% to 50% from the date of his retirement, i.e., 01.01 2014.

8. In fine, the applicant is entitled to broadbanding of his disability element of pension from 20% to 50% with effect from 01.01.2014. The respondents are directed to issue a Corrigendum PPO to that effect. The arrears shall be paid within three months from the date of this order and in default, the applicant is entitled to interest at 9% p.a. The Original Application is allowed accordingly. No order as to costs.

Sd/-

LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/-

JUSTICE BABU MATHEW P. JOSEPH
MEMBER (JUDICIAL)

02.06.2017
//True Copy//

Member (J) – Index : Yes/No
Member (A) – Index : Yes/No
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Internet : Yes/No
Internet : Yes/No

To:

1. The Secretary
Ministry of Defence
South Block, New Delhi-110 011.
2. The Chief of Army Staff
Army Headquarters.
South Block, New Delhi -110 001.
3. The Adjutant General's Branch,
Additional Directorate General-Personnel Services,
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Draupadi Ghat,
Allahabad, UP State.211 014.
5. Shri.B.A.Thayalan,
Counsel for applicant.
6. Shri G.Venkatesan, CGC
Counsel for respondent.
7. OIC, Legal Cell,
Dakshin Bharat Area, Chennai.
8. Library, AFT, Chennai.

HONOURABLE MR.JUSTICE BABU MATHEW P. JOSEPH
MEMBER (JUDICIAL)
AND
HONOURABLE LT GEN K. SURENDRA NATH
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Dt: 02.06.2017