

COURT - 2
ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

(Through Video Conferencing)

36.

OA 12/2017 (OA 1895/2012 RB Chandigarh)

Lt Col Manohar Singh Rathore (Retd)

... Applicant

Versus

Union of India and Ors

... Respondents

For Applicant

: Mr. Naresh Ghai, Advocate

For Respondents

: Mr. Prabodh Kumar, Advocate

CORAM

HON'BLE MS JUSTICE SUNITA GUPTA, MEMBER (J)

HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)

ORDER

1. The Applicant filed the OA praying for directions to the Respondents to (a) grant Service Element of Disability Pension (b) Rounding off the disability element of pension from 50% to 75% with effect from 1.5.2010 with interest @ 12%.

2. The Learned Counsel for the Applicant submits that the Applicant was commissioned on 16.06.1990 as a Second Lieutenant in the Territorial Army and superannuated at the age of 54 years on 31.3.2010 after rendering 14 years and 2 days of Qualifying Service. The Applicant was diagnosed for Multi Fracture Distal Ulna (Rt & Lt) at the time of discharge and his disability was assessed @ 50%. The Applicant is in receipt of Disability Element of Disability Pension @ 50% without the benefit of rounding off to 75%. The Applicant submits that he is eligible for condonation of shortfall upto 12 months under the clause "Late Entrant" which has been favourably decided

in many cases by AFT PB including TA 403/2010 Chd dated 26.5.2011 in the case of Maj HS Sekhon's widow. The shortfall in service, if condoned, would help him to become eligible for pensionable service of 15 years under existing provisions for Late Entrants. This would enable him also to earn Service Pension. The Applicant sent a Legal Notice dated 16.06.2012 which has not been replied. Hence, the Applicant seeks remedy through this Tribunal by filing the present OA.

3. The Learned Counsel for the Respondents admits that the the Applicant was commissioned on 16.06.1990 as a Second Lieutenant in the Territorial Army and superannuated at the age of 54 years on 31.3.2010. The Release Medical Board held at MH, Kirkee on 11.1.2010 diagnosed the Applicant's disease as (i) Comminuted Fracture distal radius Ulna (Rt Optd) and (ii) Fracture Distal Ulna (Lt) assessed the disability @ 30% and 20% respectively, with composite assessment @ 50% for life, opining that the disability was attributable to Military Service. Accordingly, the Disability Element of Disability Pension was granted to the Applicant wef 1.4.2010. Para 183 of Pension Regulations for the Army applicable to JCOs and PBOR and Para 292 clearly states that the grant of pensionary awards to personnel of Territorial Army shall be governed by the same general rules as are applicable to corresponding personnel at the Regular Army, except where they are inconsistent with the provisions of the regulations in this chapter. The minimum period of qualifying service is required for pension is 20 years (15 years in the case of a late entrant). Only mandated years of qualifying service shall count in the instant case and the petitioner does not fall under the condition of Para 25(a) as he has not rendered minimum period of qualifying service of 20 years. The Learned Counsel for the Respondents contends that the Legal Notice dated 16.6.2012 stated to have been sent by the Applicant has not been received by the Respondents. The statement of the

Applicant that the Legal notice was not replied is baseless without any proof. The Counsel further submits that the Applicant's total commissioned service is 19 years, 9 months and 15 days out of which the **Embodied service is 13 years, 4 months and 4 days.** Hence, this case is not covered by GoI MoD Letter No.68699/221/GS/TA-3(a)/1181/B/D(GS-VI) dated 11 June 1985. As far as citation by the Applicant on the judgement in TA No.46/2010 dated 19.2.2010 is concerned, the Applicant Maj SD Singh (Retd) was accorded conditional sanction and the clause of Late Entrant applicability is under consideration with Ministry of Defence. Likewise Maj Hardev Singh Gill and Maj Garib Singh Bal have been granted conditional sanction for release of pension under the Late Entrant clause which is subject to change and the letter has been forwarded to AFT, Legal Cell (PB) New Delhi Area, for obtaining certificate under AFT Act 31 for filing Leave to Appeal before the Supreme Court. In the case of the widow of Major HS Shekhone, sanction has not been granted till date for Leave to Appeal. Hence, the Respondents pray to dismiss the OA being devoid of merit.

4. We have heard the arguments of the Learned Counsels for the Applicant and the Respondents and perused the documents placed on record

5. Important facts of the case which merit highlighting are :

- (a) The Applicant was commissioned in Territorial Army on 16.06.1990 as Second Lieutenant and superannuated at the age of 54 years on 31.3.2010.
- (b) The Embodied Service of the Applicant is 13 years, 4 months and 4 days

- (c) Pensionary benefits under the ambit of Late Entrant Clause vide Para 34 of Pension Regulations for the Army 2008 is not applicable to Officers of the Territorial Army.

6. The following Regulations of Pension Regulations for the Army 2008 Part I are germane to this OA and are extracted as under :-

- (a) 182. The grant of pensionary awards to the service personnel shall be governed by the same general regulations as are applicable to the corresponding personnel of the Army except where they are inconsistent with the provisions of Regulations in this chapter.

The Regulations shall not apply to those who are

- (i) Civil Government Servants holding permanent appointments and
- (ii) Retired Civil Government Servants.

- (b) Minimum Qualifying service for earning Retiring Pension

34. The minimum period of actual qualifying service (without weightage) required for earning a retiring pension shall be 20 years (15 years in the case of Late Entrants).

Explanation : For purposes of the Regulations in the Chapter, a 'Late Entrant' is an Officer who is retired on reaching the prescribed age limit for compulsory retirement with at least 15 years service (without weightage) qualifying for pension but whose total qualifying service is less than 20 years (without weightage).

7. From the aforesaid , it is clear that the Applicant has not completed 15 years of embodied service as required to the Late Entry benefit. The Applicant has only 13 years, 4 months and 4 days of embodied service and is not eligible for Service Pension even if he is given the benefit of one year condonation of shortfall in qualifying service. Hence it is clear that the Applicant's plea for Service Element of Disability Pension under the provisions


of Late Entrant clause is not sustainable. As regards the judgment relied upon by Learned Counsel for the Applicant, it ^{is} ~~has~~ the case ^{of} ~~for~~ the respondents that application for grant of leave to appeal is still pending.

8. As far as broadbanding of the Disability Element of Disability Pension from 50% to 75% is concerned, we find that the Applicant is eligible for the same as per the principles laid down in the Honourable Supreme Court Order dated 10.12.2014 in Union of India Vs Ram Avtar, Civil Appeal No.418 of 2012 and connected cases, wherein it has been observed that individuals similarly placed as the Applicant are entitled to rounding off of the disability element of pension.

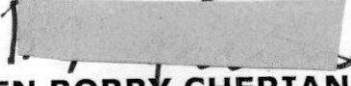
9. We partially allow the OA and direct the Respondents to grant the benefit of broadbanding of the Disability Element of Disability Pension from 50% to 60% with effect from the date of Disability Element having been granted to the Applicant. Arrears be paid within a period of 3 months from the date of receipt of a copy of this order. Failing to comply, the Applicant is entitled to the said arrears with interest at 6% *per annum* till the date of realization.

10. No order on costs.

Pronounced in the Open Court on 1st day of December, 2022.


(JUSTICE SUNITA GUPTA)

MEMBER (1)


(LT GEN BOBBY CHERIAN MATHEWS)

MEMBER (A)