

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.138 of 2014

Wednesday, the 26th day of August 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

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

No.2578516L Ex Hav
K.Purushotham Reddy
aged 54 years, Record Office:
The Rajputana Rifles
Address:-Door No.9-3-134,
Korla Vedi Street
China Bazar, Tirupati (AP)
Pin-517 501.

.. Applicant

Party in person

vs.

1. The Union of India,
Through the Secretary
The Government of India
Ministry of Defence (Army)
South Block, New Delhi
Pin-110 011.

2. The Chief of the Army Staff
Army Headquarters, Sena Bhavan
DHQ Post, New Delhi-110 011.

3. The Officer-in-Charge,
The Rajaputana Rifles
Pin-900106, C/o APO.

4. The Principal Controller of
Defence Accounts (Pensions),
Draupadighat, Allahabad (UP),
Pin-211 014.

.. Respondents

By Mr.S. Haja Mohideen Gisthi,
SCGSC

ORDER

(Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiah, Member (Judicial))

1. This application is filed by the applicant seeking for grant of disability pension at 50% with effect from 01.08.1999 after broadbanding the disability of 30% granted to the applicant.

2. The factual matrix of the applicant's case would be as follows:

The applicant was enrolled in the Army on 08.03.1979 and he was discharged from service on medical category with effect from 01.08.1999, but on compassionate grounds. The applicant was placed permanently in Low Medical Category as per the report of the Release Medical Board. The claim for disability pension was not admitted by the respondents and he had filed an application in O.A.No.20 of 2010 before this Tribunal in which the applicant was sanctioned with disability element of pension at 20% with effect from 01.08.1999 and thereafter at 30% on the opinion of RSMB. Accordingly, PPO was also issued in favour of the applicant. The

applicant had sought for converting 30% of the disability to be broadbanded to 50% as per the policy of the Government of India. He filed an application in O.A.No.60 of 2012 before this Tribunal and the same was withdrawn by his counsel with liberty to file fresh application. The claim of the applicant was refused by the respondents on the ground that the applicant was discharged from service on 31.07.1999 under Item 13 (3) III (iv) of Army Rule 1954 at his own request and therefore he was not eligible for the benefit of broadbanding. The rejection of the respondents to broadband the disability is not sustainable. He would therefore seek for broadbanding of disability of 30% into that of 50% and thus the application may be allowed.

3. The objections raised by the respondents in the reply statement would be as follows:

The enrolment of the applicant and the discharge from service with effect from 31.07.1999 at his own request after completion of 20 years 4 months 24 days of service are admitted. The facts that the applicant was affected by "*Osteo Arthritis (RT) Knee (715)*" and "*Obesity V-(278)*" and they were noted by the Release Medical Board and the percentage of disability has also been assessed for two years and the composite assessment was fixed at 20% and also the disability, "*Osteo Arthritis (RT) Knee (715)*" was

declared as aggravated by military service were also admitted. Similarly, the claim made in O.A.No.20 of 2010 for the grant of disability element was also accepted by this Tribunal in its order dated 22.12.2010. In obedience of the said order, the applicant was given conditional sanction for the grant of disability element of pension at 20% with effect from 01.08.1999 to 31.12.2005 and at 30% from 01.01.2006 for life and these facts are also admitted. The applicant was discharged from service on his own request. The Government of India has approved implementation of Hon'ble Apex Court's order made in Civil Appeal No.418 of 2012 in between **UOI vs. Ram Avtar and 800 others** and had decided to order broadbanding prospectively with effect from 01.01.2015, to all the applicants in those cases except the premature/voluntary retirees. Therefore the applicant's case would not be covered by the decision of the Government of India and an appropriate order may be passed in the facts and circumstances of the case and thereby to dismiss the application being devoid of merit.

4. On the above pleadings, the following points have been framed for consideration:

1. Whether the disability of 20% and 30% suffered by the applicant be rounded off to 50% for the purpose grant of disability element of pension payable to the applicant?

2. To what relief the applicant is entitled for?

5. We heard the arguments of the applicant who appeared in person and Mr. S.Haja Mohideen Gisthi, learned SCGSC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for respondents. We have also perused the documents produced in this case.

6. **Point No.1:** According to the applicant, he was granted disability element of disability pension at 20% from 01.08.1999 to 31.12.2005 and thereafter at 30% with effect from 01.01.2006 for life. He would also submit that he had filed an application in O.A.No.60 of 2012 seeking for broadbanding of the benefit as per the policy letter of Government of India dated 31.01.2001, but the same was withdrawn by his counsel with liberty to file a fresh application. Therefore, he has filed the present application for the broadbanding of the disability of 30% into that of 50% as per the policy.

7. Per contra, the learned CGSC would submit in his argument that the Hon'ble Apex Court had passed an order in Civil Appeal No.418 of 2012 between **Union of India vs. Ram Avtar vs. 800 and others**, in which it was observed that the personnel who had completed the service or retired after superannuation who suffered

disability receiving disability pension have been granted the benefit of broadbanding and the cases of PMR/VRS have not been given such benefit. He would further submit that the Government of India had also passed an order granting the benefit of broadbanding to those persons who were superannuated or completed their services with Low Medical Category as well as receiving the disability pension would be granted broadbanding of their disability with effect from 01.01.2015 and accordingly all those persons are getting broadbanding benefits from the said date. He would also submit that the applicant who had prematurely retired on compassionate grounds is not entitled for the benefit of broadbanding even as per the judgment of the Hon'ble Apex Court or through the order of Government of India passed in favour of the personnel with effect from 01.01.2015.

8. On the submissions made on either side, we have to consider as to whether the applicant who was discharged on compassionate grounds would get the benefit of broadbanding. We have seen in an earlier case filed before this Tribunal in **O.A.No. 66 of 2012** between **A.R. Patil vs. UOI**, this Tribunal had granted broadbanding benefits to the applicant therein who opted for premature retirement and was discharged accordingly. This Tribunal had followed the judgment of AFT Chandimandir Regional

Bench made in **O.A.No.1960 of 2012** in **Ved Prakash** case. The following passage would enlighten us to come to a conclusion as to whether the benefit of broadbanding also be given to the premature retirees or discharged persons. The said case was disposed with number of other cases in which the said Bench has decided that the benefit of broadbanding would be available to the applicants who were discharged prematurely. Leave was also granted on an oral application of the parties while the judgment was pronounced by the said Bench. The relevant passage in the said judgment would be as follows:

"A reading of the above provisions does clearly show that "Broad-banding" was never intended or desired to be confined to any particular category or categories of persons only. It was intended for universal application across the spectrum. If the object sought to be achieved was to eliminate subjectivity in assessing percentage of disability and to rationalize the scheme, then it is difficult to see how this objective is to be achieved by application to only those whose tenure is cut short and not for those who complete their tenure. We may also note that the Pension Regulations promulgated in 1961 were made applicable from 1954 and till the 5th Pay commission there was no difference in the compensation based on the percentage of attributable disability. Broad banding if implementing only for

those whose tenure was cut short would create two classes from an existing homogeneous class. Differentia must have a rational relation to the object to be achieved and classification must be founded on intelligible differentia which distinguishes one class from the other. We see no rational or intelligible basis of creating such classification in the matter of broad banding.

*Thus for the above reasons, it is our considered opinion that the view taken by Hon'ble Supreme Court in **K.J.S. Buttar's case** addresses the issue comprehensively and is required to be followed by us. A number of judgments have been cited by the counsel on either side on the aspects as to when the judgment can be said to be a judgment sub-silentio or per in curium, or when does it not have a value of precedent, or when it is not required to be followed. However, we need not go into all these aspects for the simple reason, that we are only faced with the situation of two conflicting judgment of the Hon'ble Supreme Court, rendered by the Benches comprising of identical number of Hon'ble Judges and are left with no choice but to choose one of them, and that unpleasant and uphill task we have tried to perform.*

*Thus having considered all aspects, we conclude that the claims of the petitioners are held to be covered by the ratio in **K.J.S. Buttar's case**, and they are held entitled to the same reliefs as*

*granted in **K.J.S. Buttar's case**. The effective date of accrual of benefits would be as read with the judgment of this Tribunal dated 22.12.2011 passed in O.A.No.1370 of 2011 Labh Singh Vs. U.O.I."*

9. On appeal preferred by the Court, the Hon'ble Apex Court had heard the cases and had delivered judgment in **UOI vs. Dayaram and others** batch matter (Crl.Appeal No.1835 of 2015 etc.,) confirming the judgment rendered by AFT Chandimandir in O.A.No.1960 of 2012 (ie) **Ved Prakash** case. Thus, we could see that the broadbanding facility was also granted to the personnel who opted for premature or voluntary retirement from service. In the said judgment, the Hon'ble Apex court had applied the principle laid down in **Ram Avtar's case** and granted benefit to the personnel who retired prematurely or voluntarily. The applicant being a premature dischargee or retiree from Army is also thus entitled to the said benefit of broadbanding as per the dictum laid down in the aforesaid judgment of the Hon'ble Apex Court. Therefore, the Government order conferring the benefit to the retirees on completion of engagement or superannuation and restriction of the benefits against the PMR/VRS retirees would not affect the rights of the premature retirees accrued through the judgment of the Hon'ble Apex Court.

10. Therefore, we are of the considered opinion that the applicant is entitled for the benefit of broadbanding from 20% and 30% respectively to 50% as asked for. Accordingly, this point is ordered in favour of the applicant.

11. **Point No.2:** In view of our discussion held above, the claim of the applicant for broadbanding the disability of 20% and 30% to 50%, is allowed from the date of his discharge (i.e.) 01.08.1999. Accordingly, the respondents are directed to issue corrigendum in the PPO of the applicant and to pay the arrears of difference in the disability element of pension till this date within a period of 3 months. Failing to comply, the respondents are liable to pay the said arrears with interest at 9% p.a. till its realization. Thus the application is allowed. No order as to costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

26.08.2015
(True copy)

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

Internet : Yes/No
Internet : Yes/No

vs

To:

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The Government of India
Ministry of Defence (Army)
South Block, New Delhi
Pin-110 011.

2. The Chief of the Army Staff
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Pin-517 501.

PARTY IN PERSON

6. Mr. S.Haja Mohideen Gisthi
SCGSC
For respondents.

7. OIC, Legal Cell,
ATNK & K Area, Chennai.

8. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

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Dt: 26.08.2015