

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI**O.A.No.142 of 2014****Tuesday, the 14th day of June 2016**

The Honourable Justice S.S. Satheesachandran
(Member-Judicial)

and

The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

Major (Retd) K Arivarasan
Service No.IC 40628-L
Son of Late A.Kannan
aged about 58 years
No.674, 8th Street, IOB Nagar, SIPCOT
Ranipet, Walaja Taluk
District – Vellore,
Tamil Nadu
Pin: 632 403

...Applicant

By Legal Practitioners:
Mr.M.K.Sikdar and Mr.S.Biju

vs

1.Union of India
Through The Secretary
Govt. of India, Ministry of Defence
New Delhi – 110 011

2.The Chief of Army Staff
Integrated HQs of MOD (Army)
Post – DHQ, New Delhi – 110 011

3. The PCDA (P)
Draupadi Ghat
Allahabad (U.P)
PIN – 211 014

...Respondents

By Mr. K.Ramanamoorthy, CGSC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

1. We have passed an order on this O.A.No.142 of 2014 on 23rd July 2015 with directions to hold the Review Medical Board at Military Hospital, Chennai for the purpose of assessing the claim of disability, "*Ankylosing Spondylitis of Cervical Spine 724 (A) V-67*". The respondents were directed to place the said Review medical Board proceedings by 29.10.2015.
2. The respondents had convened the Review Medical Board at Military Hospital, Chennai on 19th March 2016. The applicant was admitted and examined as directed by this Tribunal and the respondents have now submitted the Review Medical Board proceedings.
3. The Release Medical proceedings held on 10.08.1998, at the time of premature release of the applicant, opined that the disability of the applicant of the applicant, namely, "*Ankylosing Spondylitis of Cervical Spine 724 (A) V-67*" to be 50% with probable duration of two years. The board had also opined that the disability though not attributable to service, but was aggravated by military service. In the Review Medical Board placed before us, it is now seen the condition of the applicant has further deteriorated and the said Review Medical Board has held that the applicant's disability to be 70% for life.
4. The respondents in their submissions had stated before this Tribunal that the applicant is not entitled to disability pension even though his ID was aggravated, for the reason that the applicant had sought voluntary

retirement and therefore, in accordance with Regulation 50 of Pension Regulation for the Army 1961, Part-I, the applicant is not entitled to disability element of pension. They further stated that as per the Government of India letter dated 29th September 2009, granting of disability element of pension is applicable only to those who had prematurely/voluntarily retired on or after 01.01.2006. In the instant case, the applicant sought for premature retirement on 28 September 1998 and therefore, the provisions for grant of disability pension are not attracted.

5. Per contra, the learned counsel for the applicant argued that the Hon'ble AFT Principal Bench at New Delhi in its order dated 07.02.2012 in *O.A.No.336 of 2011* in the case between *Maj (Retd) Rajesh Kumar Bhardwaj and Union of India & Others* struck down Clause-3 of the Notification No.16(5)/2008/D(pen/Policy), dated 29.09.2009 and there is no bar for the applicant to claim the benefit of disability pension as per the said Notification. The relevant paragraphs are as follows:

" Now coming to the facts of the present case, notification dated 29.09.2009 has been issued for giving benefit to the persons who have sought voluntary retirement as earlier it was not possible to be given because of the Regulation 50. Regulation 50 contemplates that no person shall be entitled to disability pension if he sought voluntary retirement. But this was watered

down by issuing notification dated 29.09.2009 which reads as under;

*" No.16(5)/2008/D(Pen/Policy)
Government of India
Ministry of Defence
Deptt.Of Ex-Servicemen
Welfare*

New Delhi 29th Sept. 2009

To

*The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff*

Subject: Implementation of Government decision on the recommendation of the Sixth Central Pay Commission-Revision of provisions regulating Pensionary Awards relating to disability pension/war injury pension etc. for the Armed Forces Offices and Personnel Below Officer Rank (PBOR) on voluntary retirement/discharge on own request on or after 1.1.2006.

Sir,

The undersigned is directed to refer to Note below Para 8 and para 11 of the Ministry's letter No.1(2)/97/D(Pen-C) dated 31.1.2011, wherein it has been provided that Armed Forces personnel who retire voluntarily or seek discharge on request shall not be eligible for any award on account of disability.

2. In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.1969 of their Report, President if pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury

element at the time of their retirement/discharge whether voluntary or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.

3. The provisions of this letter shall apply to the Armed Forces personnel who are retired/discharged from service on or after 1.1.2006.

4. Pension Regulations for the three Services will be amended in due course.

5. This issue with the concurrence of Ministry of Defence (fin.) vide their U.O.No.3545(fin/Pen) dated 29.09.2009.

6. Hindi version will follow.

*Yours faithfully,
(Harbans Singh)*

Director/Pen/Policy)
Copy to:-
As per standard list."

As per this notification, the benefit has been extended to the Armed Forces personnel as mentioned in paragraph no.2 of this notification but in paragraph no.3, they have said that this will be applicable from 01.01.2006, i.e. the persons who have sought voluntary retirement on or after 01.01.2006 will be benefited and rest will not be benefited. Petitioner has retired prior to 01.01.2006, therefore, he has been denied the benefit on account of cut-off date as per notification dated 29.09.2009.

Learned counsel for the respondents has seriously contested before us that Government has financial constraints, therefore, this benefit cannot be extended uniformly to the persons who sought voluntary retirement prior to 01.01.2006.

In this connection, learned counsel for the petitioner has invited our attention to the subsequent notification dated 03.08.2010 of PBOR which reads as under;

'Tele-23335048

*Addl Dte Gen Personnel Services
Adjutant General's Branch
Integrated HQ of MoD (Army)
DHO PO, New Delhi 110011
B/39022/Mis/AG/PS-4 (L)/BC*

*All Legal Cells
All line Dtes*

*GRANT OF DISABILITY PENSION TO PREMATURE RETIREMENT
CASES PROCEEDING ON DISCHARGE PRIOR TO 01 JAN 2006*

- 1. Further to this office note No.A/39022/Misc/AG/PS-4(Legal) dt 22 Feb 2010 on subject matter.*
- 2. It is clarified that as and when a pre-2006 retiree PBOR files a court case to claim disability pension which was denied to him merely because he had proceeded on Premature Retirement, such cases will be immediately processed for Government Sanction through respective Line Dtes and Not contested. Government Sanctions in which cases will also be proposed in the same manner as that followed in cases of Government Sanctions issued in compliance of court cases.*
- 3. This arrangement will be effective till MoD/D(Pen/Legal) formulated and issues comprehensive Govt orders.*

4. *It is reiterated that only those cases where disability pension was denied to a PBOR solely on the grnds that he had proceeded on PMR will be processed for sanction and will not be contested. Which implies that as and when a PBOR files a case of similar nature their case files will be processed for Govt sanction without awaiting court order.*

5. *Contents of this letter are not applicable to officers as PRA, Rule 50 has been upheld by Hon'ble Supreme Court in judgment dt 06 July 2010 in case of Lt Col Ajay Wahi (SLP No.25586/2004, Civil Appeal No.1002/2006).*

7. *All line Dtes are requested to give vide publicity to this letter amongst all Record Offices.*

(Ajay Sharma)
Col
Dir, Ag/PS-4(Legal)
For Adjutant General

Copy to:
MoD/D(Pen/Legal)
JAG Deptt'

It has been clarified that as and when a pre-2006 retiree PBOR files a court case to claim disability pension which was denied to him merely because he had proceeded on Premature Retirement, such cases will be immediately processed for Government sanction through respective Line Dtes and not contested Government sanctions in which cases will also be processed in the same manner as that followed in cases of Government sanctions issued in compliance of court cases. That means Government has relaxed the condition for the PBOR, even

if they sought voluntary retirement prior to 2006 they will not be denied the benefits of disability pension as per rules. If the Government can show benevolence for PBOR then why not same benefit can be given to the officers who are far less in number than PBOR.

The plea of the respondents of financial constraints is exploded. The number of PBOR who sought voluntary retirement pre-2006 would be hundred times more than that of officers. Therefore, we think that plea taken by the Government of financial constraints is nothing but an afterthought to somehow justify the administrative action. When this benefit has been extended to PBOR, we see no reason why it should not be released to the officer. More so, the justification of financial constraints pleaded by the respondents is exposed on account of that they have released the benefit to the PBOR which are larger number than that of officer. Therefore, in our opinion, this artificial distinction which has been sought to be made of pre and post 01.01.2006 is without any rational basis. It is only a ploy to deprive the benefits of disability pension to the officers' rank.

Hence, we strike down the Clause 3 of the notification dated 29.09.2009. It will be open for the petitioner to make their representations to the authority to seek the disability pension benefit in terms of the aforesaid circular and Government will examine the matter and pass appropriate orders in accordance with law. "

6. From a perusal, we find that the above citation is applicable to the case of the applicant herein. Earlier, this Tribunal followed the above principle in many cases including in the case of *Lt Col (Retd) Catherine George vs. UOI and others in O.A.No.33 of 2014, dated 16th October 2014* wherein it was held that the applicant (therein) was entitled to disability pension even though she had taken premature retirement prior to 01.01.2006 and we note that the respondents have since granted the said benefit to her.

7. In view of the foregoing, we are in agreement with the submissions of the learned counsel for the applicant and find that the applicant is entitled to disability pension on his retirement from service, provided he fulfills the conditions laid down in Rule 173 of Pension Regulations for the Army 1961. As his disability has now been found to be 70% for life, and it has been found to be aggravated by service, he fulfills the said conditions and therefore, he is entitled to disability element of pension, in addition to his service pension. The applicant is further entitled to rounding off disability pension from 70% to 75%, in the light of the Government of India letter dated 31.01.2001 and the decision of the Hon'ble Apex Court in the case of *UOI & Ors. vs. Ram Avtar & Ors. (Civil Appeal No.418 of 2012, dated 10th December 2014)*. However, applying the principle laid down by Hon'ble Apex Court in *UOI vs. Tarsem Singh* reported in (2008) 8 SCC 648, the applicant is entitled to arrears of disability pension from three years prior to the date of filing of the Original Application (21.11.2014), i.e., from 21.11.2011.

8. In fine, the applicant is entitled to disability element of pension at 75% for life, with effect from 21.11.2011. The respondents are directed to grant arrears of disability element of pension to the applicant within a period of three months, in default to pay interest at 9% per annum on the said arrears. O.A. is disposed of accordingly. No costs.

Lt Gen K Surendra Nath
Member (Administrative)

Justice S.S. Satheesachandran
Member (Judicial)

14.06.2016

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

VS

N.B.: The earlier order dated 23.07.2015
passed by us in the above O.A. shall form part of this order.

M (A)

M (J)

1. The Secretary
Govt. of India, Ministry of Defence, New Delhi – 110 011
2. The Chief of Army Staff
Integrated HQs of MOD (Army)

Post – DHQ, New Delhi – 110 011

3. The PCDA (P)
Draupadi Ghat, Allahabad (U.P), PIN – 211 014
4. M/s M.K.Sikdar and S.Biju
Counsel for applicant
5. Mr.K.Ramanamoorthy, CGSC
Counsel for respondents
6. OIC, Legal Cell
HQ DAKSHIN BHARAT AREA
Chennai-600009.
7. Library, AFT, RB, Chennai.

Hon'ble Justice S.S. Satheesachandran
(Member-Judicial)
and
Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.No.142 of 2014

Dated : 14.6.2016