

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.18 of 2012

Friday, the 14<sup>th</sup> day of September 2012

THE HON'BLE JUSTICE SHRIKANT TRIPATHI  
(MEMBER-JUDICIAL)  
AND  
THE HON'BLE LT GEN (RETD) ANAND MOHAN VERMA  
(MEMBER – ADMINISTRATIVE)

Ex.Sep Dasari David Raju  
Service No.6367034L  
Door No.1-6-95/9/2, New Jublieepura  
Khamman, Dist-Khammam,  
Andhra Pradesh – 507 003.

... Applicant

By Legal Practitioners: M/s M.K.Sikdar  
and S.Biju, Counsels

Vs.

1.Union of India represented by  
The Additional General Pers Service,  
Adjutant General Branch, "A" Wing,  
Integrated HQ of Mod (Army), Sena Bhawan  
New Delhi-110105.

2.The Officer-in-Charge  
ASC Records (South)  
Bangalore-560 007.

...Respondents

By Shri B.Shanthakumar, SPC (Govt. Advocate for Respondents).

**ORDER**

(Order of the Tribunal made by  
Hon'ble Justice Shrikant Tripathi, Member-Judicial)

1. Heard the counsel for the applicant and the counsel for the respondents and perused the record.

2. The applicant has filed the instant petition under Section 14 of the Armed Forces Tribunal Act, 2007 for recovery of the disability pension with effect from the date of his discharge from the Army and has

also prayed for rounding off 20% disability pension to 50% in terms of the Government of India letter dated 31.1.2001 (Annexure-IV to the Counter).

3. It is not in dispute that the applicant was enrolled in the Indian Army as Sepoy on 31<sup>st</sup> December, 1974 and sought for discharge from the Army with effect from 3<sup>rd</sup> October 1984 on compassionate grounds.

4. The applicant has claimed the disability pension as his disability was attributable to military service but it was denied vide the Impugned Order No.7301/Gen/Pen/DP-V dated 11.10.2010 by the 2<sup>nd</sup> respondent on the ground that applicant was not entitled to the disability pension because he had himself sought for his discharge from the Army.

5. The applicant has pleaded that the discharge was prayed for only due to the reason that the he had sustained disability of 20% and was unable to work in the Army. The Medical Board opined that the disability was attributable to the military service. For sustaining his claim, the applicant has placed reliance upon the letter No.16(5)/2008/D(Pen/Policy) dated 29<sup>th</sup> September, 2009 of the Government of India, Ministry of Defence (Annexure-II to the Counter) and letter No.B/39022/Misc/AG/PS-4(L)/BC dated 3<sup>rd</sup> August, 2010 of the Addl. Dte. Gen Personnel Services, Adjutant General's Branch, Integrated HQ of MoD (Army) DHO PO, New Delhi-110011 (Annexure-III to the Counter) and contended that on account of these two letters the applicant was entitled to the disability pension despite the fact he had himself opted for his ouster from the Army.

6. The respondents have, on the other hand, set up the defence that the disability was, no doubt, attributable to military service but on account of the fact that the applicant was discharged on his own request, he was not entitled to the disability pension. More so, the above government letters were not attracted in the present matter.

7. In this case, it is not in dispute that the applicant had sustained a disability to the extent of 20% which was attributable to military service. Had the applicant been discharged by the Army itself on account of that disability, he would have been entitled to the disability pension. But his claim for the disability pension is being denied by the respondents only on the ground that the discharge was granted to the applicant on his own request.

8. Therefore, the sole question that arise for consideration is whether the applicant, who had himself opted for his release from the army on account of the disability, is entitled to disability pension?.

9. A similar question had arisen before the Kochi Bench of the Armed Forces Tribunal in O.A.No.29 of 2010 in which the Kochi Bench, of which one of us (Justice Shrikant Tripathi) was a Member arrived at the following conclusion:

“ 2. The disability pension is payable if the disability sustained is attributable to or aggravated by military service, provided the disability is 20% or more. It is immaterial whether the person concerned himself claimed discharge or he is discharged by the authorities. The applicant seems to have claimed discharge only on account of the disability. Had he not sustained the disability, he would not have opted for the discharge. So, his discharge was only on account of the disability. In Mahavir Singh Narwal vs. Union of India, 2004 (102) FLR 330, the Hon'ble Delhi High Court in a similar matter allowed the disability pension. Similarly, the Hon'ble Kerala High Court after following the judgment of the Delhi High Court, expressed the same view in O.P. No.39594 of 2002. There is also an order of this Bench, in T.A. No.37 of 2010 dated 23rd March, 2010, wherein also a similar view was taken. ”

10. In our view, the aforesaid proposition is squarely applicable in the present matter.

11. Apart from the aforesaid Judgement, para-2 of the letter No.16(5)/2008/D (Pen/Policy) dated 29.9.2009 issued by the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare (Annexure-II to the Counter) is also relevant which is reproduced as under :

....

" 2. In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is 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."

12. It is also pertinent to mention that the letter dated 29<sup>th</sup> September, 2009 of the Government of India (Annexure-II to the Counter) has been made applicable with effect from 1.1.2006.

13. It may also be mentioned that the aforesaid Government letter has been applied even with regard to the pre-2006 PBOR retirees vide the letter dated 3<sup>rd</sup> August, 2010 issued by the Additional Director General, Personnel Services, Adjutant General's Branch, Integrated HQ of MOD (Army), DHQ, New Delhi-100011 (Annexure-III to the counter).

14. The theme of the aforesaid two letters is that if an Armed Force personnel sustains any disability but is retained in service despite the disability and retires later on in due course or he seeks voluntary retirement and has forgone the lump-sum compensation in lieu of the disability, he would be entitled to the disability element/war injury

element of the pension. The learned counsel for the applicant made the statement that the lump-sum compensation in lieu of the disability has not been paid to the applicant till date. As such, the aforesaid Government orders are fully applicable in the present matter.

15. Therefore, we are of the view that the applicant was entitled to the 20% disability element of pension in terms of the letters dated 29.09.2009 and 03.08.2010 (Annexure II and III to the counter with effect from 01.01.2006). The learned counsel for the applicant further submitted that though the disability was 20% but the disability pension was liable to be rounded off to 50% vide Order No.1(2)/97/1/D(Pen-C) dated 31.1.2001 (Annexure-IV to the counter).

16. The learned Counsel for the applicant referred to para 7.2 of the Government letter (Annexure-IV to the counter) which provides as follows :

7.2 Where an Armed Force personnel is invalided out under circumstances mentioned in Para 4.1 above, the extent of disability or functional incapacity shall be determined in the following manner for the purposes of computing the disability element:-

<b>Percentage of disability as assessed by invaliding medical board</b>	<b>Percentage to be reckoned for computing of disability element</b>
Less than 50	50
Between 50 and 75	75
Between 76 and 100	100

17. In view of the aforesaid, if the percentage of the disability as assessed by the Invaliding Board is less than 50%, the percentage to be reckoned for computing the disability would be rounded off to 50%.

18. The submission on behalf of the respondents was that the provisions of the letter dated 31.1.2001 (Annexure-IV to the counter) has

been made applicable to the Armed Forces personnel who were in service on 1.1.1996 or joined/joins thereafter and this provision has been specified in para 2.1 of the letter. Therefore, the applicant who had retired prior to 01.01.2006 was not entitled to the benefit of the letter dated 31.01.2001. The learned counsel for the applicant, on the other hand, submitted that the benefit of rounding off cannot be denied to those who retired prior to 1.1.1996 and the stand of the respondents that the benefit would apply only to "post-1.1.1996 retirees" is not only discriminatory but is also violative of Article 14 of the Constitution of India, as propounded by the Apex Court in **D.S.Nakara and Others Vs. Union of India (1983) 1 SCC 305** and **K.J.S.Buttar Vs. Union of India and others 2012 (1) AFTLJ 38**.

19. In the case of **K.J.SButter Vs. Union of India and other 2012(1) AFTLJ 38**, the Apex Court, while considering a case application of the aforesaid letter dated 31.01.2001 to pre and post-1996 retirees, held that the restriction of benefit to only officers who were invalided out of service after 1<sup>st</sup> January, 1996 was violative of Article 14 of the Constitution and was thus illegal. The Apex Court further held that in the matter of liberalisation of an existing scheme, all pensioners should be treated equally.

20. The dictum laid down in **K.J.S Buttar (supra)** is based on the principles propounded by a Constitution Bench of the Supreme Court in **D.S.Nakara and others Vs. Union of India(supra)**.

21. In view of the principles so settled by the Apex Court, the contention of the respondents that the applicant was not entitled to the rounding off benefit extended by the Government of India letter dated 31.1.2001 (Annexure-IV to the Counter) cannot be upheld specially when such benefit has already been extended to pre-retirees 1996 vide the

letter 03-08-2010 (Annexure III to the Counter).. In our view, by applying the rounding off principles, the applicant would become entitled to 50% disability pension instead of 20% disability pension with effect from the due date.

22. So far as the arrears of the disability pension is concerned it cannot be granted to the applicant with effect from the date of his discharge because at that time the disability pension was not admissible to a person seeking voluntary retirement and there was a specific prohibition of grant of disability pension to such persons vide para 8 and 11 of the Government of India, Ministry of Defence letter No.1(2)/97/I/DO(Pen-C) dated 31.1.2001. The reference of the said letter has been made in para-1 of the letter dated 29.9.2009 of the same Ministry (Annexure-II to the Counter). By the letter dated 29.9.2009 the benefit of disability pension has been extended even to a person who obtained voluntary retirement on medical ground. Therefore, the appropriate date for the entitlement of the disability pension in the case of the applicant is 1.1.2006 and not prior to that. As such, the applicant is entitled to the 50% disability pension with effect from 1.1.2006 only. His claim for the arrears prior to 1<sup>st</sup> January, 2006, in view of the facts and circumstances stated hereinbefore is not acceptable and is liable to be dismissed.

23. For the reasons discussed above, the petition is partly allowed. Respondents are directed to pay the disability pension to the applicant with effect from 1.1.2006 and continue to do so, as long as the disability subsists. The percentage of disability was no doubt 20% but in view of the letter dated 31.1.2001 of the Government of India, Ministry of Defence (Annexure-IV to the counter), the disability is directed to be

rounded off to 50% w.e.f. 1.1.2006. The respondents are directed to calculate the arrears of pension accordingly and pay the entire arrears within three months from today and in case the arrears are not paid within the stipulated time, the applicant will be entitled to recover the arrears along with interest payable thereon at the rate of 7% per annum. The applicant's claim for the disability pension for the period prior to 01.01.2006 is dismissed.

24. Costs easy. Inform.

**Sd/-**  
**JUSTICE SHRIKANT TRIPATHI**  
**(MEMBER-JUDICIAL)**

**Sd/-**  
**Lt. GEN (RETD) ANAND MOHAN VERMA**  
**(MEMBER – ADMINISTRATIVE)**

**14.9.2012**  
**//TRUE COPY//**

To,

1. Union of India represented by  
The Additional General Pers Service,  
Adjutant General Branch, "A" Wing,  
Integrated HQ of Mod (Army), Sena Bhawan  
New Delhi-110105.
2. The Officer-in-Charge  
ASC Records (South)  
Bangalore-560 007.
3. M/s M.K.Sikdar and S.Biju, Counsels for Applicant.
4. Shri B.Shanthakumar, SPC (Govt. Advocate for Respondents).
5. OIC Legal Cell, HQ ATNK&K Area, Chennai.
6. Library, AFT, Chennai



**HONOURABLE JUSTICE  
SHRIKANT TRIPATHI  
(MEMBER-JUDICIAL)**

**AND**

**HONOURABLE LT GEN (RETD)  
ANAND MOHAN VERMA  
(MEMBER – ADMINISTRATIVE)**

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