

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI  
(Circuit Bench, Hyderabad)**

**O.A. No. 153 of 2017**

**Thursday, the 20<sup>th</sup> day of September, 2018**

**THE HONOURABLE MR.JUSTICE V.S.RAVI  
(MEMBER - J)**

**AND**

**THE HONOURABLE LT GEN C.A.KRISHNAN  
(MEMBER - A)**

No.788522 Ex/Hav.S.Devadanam,  
H.No.5-9-207-3/A, J.J.Nagar Colony (PO)  
Employees Colony, Yapral  
Secunderabad-500087  
Telangana State PIN 500083

...Applicant

**By Legal Practitioner:  
Mrs.Tonifia Miranda**

vs.

1. Union of India,  
Represented by the Secretary  
Ministry of Defence, Govt. Of India,  
South Block, New Delhi-110 011
2. The Chief of the Army Staff  
Integrated Head Quarters (Army)  
Sena Bhavan, New Delhi-110 011.
3. The Chief Record Officer,  
EME Records, Secunderabad-21.
4. The Principal Controller of Defence Accounts  
Draupadi Ghat, Allahabad-211014

...Respondents

**Shri Namavarapu Rajeshwar Rao**  
Central Government Counsel

**ORDER**

1. The applicant, who served in the Indian Army, has filed the present O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 praying for broadbanding benefit of his disability pension.

2. The applicant has stated in the O.A., and also the learned Counsel for the applicant has stated that the applicant has been enrolled on 26.08.1964 in the Indian Army and retired on 31.08.1986 after serving for a period of 22 years and 5 days.

3. Further, the applicant has been paid @ 40% disability from 1.9.1986 to 1.6.1996 and later at 30% vide PPO No.D-RD/1124/97 dated 2.3.1987 and the applicant has not got the benefit of broadbanding of his disability pension from 30% to 50%. The applicant has also issued legal notice. The respondents have not granted the broadbanding benefit to the applicant. Hence the applicant has prayed this Tribunal for granting broadbanding benefits @ 50%.

4. The respondents have stated in the reply statement and also the learned Central Government Standing Counsel has stated

that the applicant has been enrolled in the Indian Army on 26.08.1964 and discharged from service on 31.08.1986 on completion of his terms of engagement. The applicant is receiving his service pension. Prior to discharge from service, since the applicant has been placed in low medical category CEE(Phy)(P) due to his disability "BRONCHIAL ASTHMA" and the Release Medical Board (RMB) which considered the said disability as aggravated by military service due to stress and adverse climatic conditions of service.

5. The applicant's disability has been extended for life @ 20% w.e.f 2.6.1996 to 4.9.2001 vide PPO No.D/RS/1124/97 dated 2.3.1997 and with effect from 5.9.2001 @ 20% for life vide PPO No.D/RA/9501/2001 dated 28.1.2002. Since the applicant has been discharged from service on completion of his enrolment and he has not been invalidated out of service due to any disability, the applicant is not entitled for rounding off/broadbanding benefit of his disability pension. Hence, the respondents have requested to dismiss the O.A.

6. The point for consideration in the present matter is as

follows :-

Whether the applicant is entitled to get broadbanding benefits, on a careful consideration of materials, on record, in proper perspective?

7. POINT: The respondent have admitted in their reply statement that prior to the discharge of the applicant from service on 31.8.1986, the applicant has been placed in low medical category due to disability of "BRONCHIAL ASTHMA" and the Release Medical Board has considered the disability as aggravated by military service due to stress and strain and adverse climatic conditions of service. Further, the respondents themselves admitted that the said disability element of pension has been further extended for life at 20% with effect from 5.9.2001 for life vide PPO dated D/RS/9501/2001 dated 28.1.2002 enclosed as Annexure R-1.

8. The learned counsel for the applicant relied upon the **Hon'ble Supreme Court Judgment in C.A.4949/2013 dated 02.07.2013 in the case of Dharamvir Singh Vs. Union of India & Ors.,** wherein, it is observed as follows :

“ 28. A conjoint reading of various provisions, reproduced above, makes it clear that:

(i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under “Entitlement Rules for Casualty Pensionary Awards, 1982” of AppendixII (Regulation 173).

(ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].

(iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).

(iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].

(v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].

(vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

(vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7,8 and 9 as referred to above."

29. xxxxxx.

30. In the present case it is undisputed that no note of any disease has been recorded at the time of appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In absence of any note in the service record at the time of acceptance of joining of appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service.

9. The Hon'ble Supreme Court has dismissed a Batch of appeals in **C.A.No.418 of 2012 on 10.12.2014 in Union of India Vs. Ram Avtar** as filed by the Union of India, relating to granting of broad banding benefit of disability pension to the beneficiaries, as awarded by various Benches of AFT, etc, whereby the Hon'ble Supreme Court has directed the respondents to grant the said benefit also to the personnel who have not only been invalidated out

from service but to other categories also.

**10.** It has been communicated by the Under Secretary to the Government of India, **Ministry of Defence, Department of Ex-Servicemen Welfare-D (Pension/Legal) vide letter F.No.3(11)2010-D(Pen/Legal) Pt.V dated 18.04.2016** to the Chiefs of all the three services on broadbanding of disability pension. The relevant portion of the letter are set out below :-

“(a) The Hon’ble Supreme Court vide order dated 10.12.2014 dismissed more than 800 Civil Appeal tagged with Civil Appeal No.418 of 2012 filed by the Union of India Vs. Ram Avtar challenging grant of broad banding of disability element by AFTs to Armed Forces personnel other than invalided out from service. The Hon’ble Supreme Court ruled that an Armed Force Personnel retired on completion of tenure with disability aggravated by or attributable to Military Service is eligible for broad banding of disability pension/element.

(b) Accordingly, approval of competent authority is hereby conveyed for implementation of Court/AFTs orders granting broadbanding of disability element to an Armed Force Personnel retired or discharged on completion of terms of engagement with disability aggravated by or attributable to Military Service from the date mentioned in respective Court Orders.”

**11.** The Hon’ble Supreme Court in the **Civil Appeal No.5151-5152 of 2008(Arising out of SLP [C] Nos.3820-3821 of 2008) in the Union of India & Ors. Vs. Tarsem Singh decided on August 13, 2008** ordered as

follows :-

“.....6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.”

12. The perusal of the above mentioned cases and Orders reveals that the applicant has been enrolled in the Indian Army on 26.8.1964 and discharged on 31.8.1986 and also, suffered due to disease “BRONCHIAL ASTHMA” with 20% of disability for life as mentioned herein above. A detailed survey of the matter is not required in the present case, as the question involved in the case on hand has been covered by various Judgments of the Hon’ble Supreme Court such as **Dharamvir Singh’s case in Dharamvir Singh Vs. Union of India & Ors in C.A.4949/2013 dated 02.07.2013 and Union of India & Ors. Vs. Ram Avtar in C.A.418 of 2012 and the Civil Appeal No.5151-5152 of 2008(Arising out of SLP [C] Nos.3820-3821 of 2008) in the Union of India & Ors. Vs. Tarsem Singh decided on August 13, 2008.** We find no reason to deviate from the findings so entered by the Hon’ble Supreme Court in the above mentioned cases.



13. In the facts and circumstances, it is seen that the applicant is entitled to get broadbanding of his disability element of disability pension from 20% to 50%, with effect from 09.06.2014 (O.A. filed on 09.06.2017).

14. In the result, the respondents are directed to grant the duly broadbanded disability element of disability pension to the applicant @ 50% with effect from 09.06.2014. The arrears due and payable to the applicant shall be paid by the Respondents within three months of receipt of this order, failing which the arrears of amount shall carry 8% interest per annum till realization. The O.A. is disposed of accordingly. No costs.

Sd/-.....  
**LT GEN C.A.KRISHNAN**  
**MEMBER (A)**

Sd/-.....  
**JUSTICE V.S.RAVI**  
**MEMBER (J)**

**20.09.2018**  
(True Copy)

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To

1. Smt. Mrs.Tonifia Miranda , Counsel for Applicant
2. Shri Namavarapu Rajeswar Rao, Central Government Counsel for Respondents
3. OIC, Legal Cell (Army), Telangana & Andhra Pradesh Sub Area, Secunderabad, A.P.
4. Library, Armed Forces Tribunal, Regional Bench, Chennai-16.

**HON'BLE MR. JUSTICE V.S.RAVI  
(MEMBER- J)  
AND  
HON'BLE LT GEN C.A.KRISHNAN  
(MEMBER - A )**

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