

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION NO. O. A. 13 OF 2019

DATED :THIS *Eight* DAY OF MARCH, 2019

CORAM

HON'BLE JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, PVSM, AVSM, ADC

MEMBER (ADMINISTRATIVE)

APPLICANT (S) : Smt. Manasi Mallick
W/O MR-01151L
Late Brig Shaket Prokash Mallick (Retd)
D2/23, Dakshinee Housing Estate
Santoshpur
Kolkata – 700 018

Versus

RESPONDENT(S) : (1) The Union of India,
Through Secretary
Ministry of Defence
South Block, DHQ, PO,
New Delhi – 110 011

(2) The Chief of the Army Staff
Through Adjutant General
Intgrated HQ of MOD (Army)
Sena Bhawan, D. HQ P. O
New Delhi – 110 011

(3) The Addl Dir Gen of Pers Services (PS-4)
Adjutant General's Branch, IHQ of
MOD (Army)
Plot No. 108 (West), L Block
Church Road, Brassey Avenue
New Delhi – 110 001

(4) Principal Controller of Defence Accounts (Pensions)
Draupadi Ghat
Allahabad – 211014

Counsel for the Applicant(s) : Mr. S. K. Choudhury, Ld. Advocate

Counsel for the Respondent(s) : None

ORDER

PER LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC, MEMBER (ADMINISTRATIVE)

1. This Application u/s 14(4) of AFT Act 2007 is filed by the widow of Brig S P Mallick (Retd) in which the applicant has claimed rounding off disability element of disability pension in respect of of her late husband.
2. No affidavit-in-opposition is being asked from the respondents as this is a covered matter.
3. The factual matrix of the case is that the husband of the applicant retired from service on 01 Feb 1985 with 40% disability, and he was in receipt of 40% disability pension for life w.e.f 02 Feb 1985. He passed away on 13 Jan 2014. However, no broad banding was granted to the applicant's husband.
4. The applicant has submitted several applications for grant of broad banding of disability pension from 40% to 50% w.e.f 01.01.1996 in accordance with AFT Principal Bench Order of OA 1493/2016 dated 01.12.2017. Since PCDA (P) has rejected the order vide the letter dated 2 November 2018, the applicant has filed this O.A.
5. The issue of broad banding of disability pension is no longer res integra in view of catena of judgments as well as the Government policy on the issue.
6. In this regard we may refer to this Bench Order dt 19.12.2017 in cause title OA 164/2017 along with MA 129/2017. Para 11 of the order is set out below:

"11. Subsequently, Larger Bench of the Armed Forces Tribunal also hearing bunch of cases on similar matter in O. A. No. 1439 of 2016 and five others has passed order on 01.12.2017 to this effect wherein the 'three years' clause restriction has been done away with. Relevant extract of the order are set out as under :

"After having fully discussed the issue involved before us and to set the controversy at rest vis-a-vis arrears of broad banding of the disability/ war injury element of disability pension on the ground of delay in filing application by the individual/applicant(s), we conclude thus:

- (i) *Armed Forces personnel who have been invalided/superannuated/completed terms of service/discharged under normal circumstances with disability, pre or post 01.01.1996, (including the applicants) will be entitled to broad banding of disability/war injury element. Armed Forces personnel who retired pre 01.01.1996 will be entitled to the arrear of broad banding with effect from 01.01.1996 and in the case of those who retired on or after 01.01.1996 will be entitled to arrears with effect from the date of their retirement.*
- (ii) *Armed Forces personnel who were premature retirees/proceeded on premature discharge with disability will be entitled to broad banding of disability/war injury element of pension with effect from either 01.01.2006 or the date of their retirement. There will, however, be no restriction of date for premature retirees to be eligible for disability/war injury benefits since the earlier restriction on pre 01.01.2006 premature retirees has been struck down.*
- (iii) *In all cases at (i) and (ii) preceding, there will be no restriction of three years on arrears and arrears will be paid according to eligibility (as stated preceding).*

The other salient conclusions are :

- (a) *Restriction of arrears can be applied to applicant(s) wherein he is not held entitled to disability/war injury element of pension, and such entitlement only gets established post adjudication by AFT/Courts; however, exception apart where the vested right of an individual is held to be denied the issue will be decided by AFT Benches, on its own facts.*

- (a) All premature/voluntary retirees will remain eligible only for disability / war injury element of pension, their service element will need to be earned independently, based on years of service rendered and held as qualified for service pension.

Following the ratio of the judgment rendered in Davinder Singh case as well as Larger Bench order dated 01.01.2016 and five others (Supra) we allow arrears with effect from 01.01.1996. The respondents are, therefore, directed to make payment of the arrears with effect from 01.01.1996 within four months from today, in default thereof, the arrears shall carry interest @ 8 per cent per annum till the date of actual payment is made.

7. Besides, Govt of India, Ministry of Defence Letter No. F.No. 3(11) 2010-D (Pen/Legal/Pt V dt. 13 Apr 2016 and Govt of India, Ministry of Defence Letter No. 12 (16)/2009/D (Pen/Policy) dt. 15 Sep 2014 also clarify this issue.
8. Since the husband of the petitioner expired on 13.01.2014, the arrears of broad banding of Disability Pension from 40% to 50% from 01.01.1996 to 13.01.2014 is due to the applicant.
9. Arrears to be paid with a period of 3 months from the date of receipt of this order failing which an interest of 8% per annum will also be paid.
8. The O. A. is accordingly allowed.
9. Respondents have however pleaded that they be allowed to prefer an appeal u/s 31 of the AFT Act to the Hon'ble Supreme Court in case they receive an adverse order. As there is no law of general public importance involved, the respondents' plea for leave to appeal u/s 31 of the Armed Forces Tribunal Act 2007 is hereby rejected.
10. No order as to cost.
11. Let a plain copy of this order, duly counter-signed by the Tribunal Officer, be supplied to all the parties upon observance of requisite formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)