

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

R.A. No. 03 of 2019
(Arising out of
O.A. No. 26 of 2016)

DATED : THE Second DAY OF MAY 2019

CORAM :

Hon'ble Dr. (Mrs.) Justice Indira Shah, Member (J)

Hon'ble Lt Gen Gautam Moorthy, Member (A)

APPLICANT (S) : 13999645Y- Ex-Sep Chhathu Lal Yadav
Son of Sri Kailash Yadav,
Presently residing at 59, Deben Babu
Road, Post Office – Kancharapara,
P.S. Bijpur, District – 24 Parganas North,
PIN – 743145

VERSUS

RESPONDENT (S) : 1. Union of India, service through the Secretary,
Ministry of Defence, South Block,
New Delhi – 110011

2. The Secretary, Department of Ex-Servicemen
Welfare & Pension,
Ministry of Defence, South Block,
New Delhi-110001

3. The Officer-in-Charger,
Army Medical Corps Records,
Lucknow, PIN-900450,
C/O 56 APO

4. The Principal Controller of Defence
Accounts (Pension), Draupadhi Ghat,
Allahabad-211014

Counsel for the Applicant (s) : Mr. Aniruddha Datta, Ld. Advocate

Counsel for the Respondent (s) : Mr. Mukesh Kumar Gupta, Ld. Advocate

ORDER**Lt Gen Gautam Moorthy, Member (Administrative)**

1. This R.A. has been filed by the applicant stating that two M.As filed in the said O.A. (being M.A. 145 of 2016 and M.A. 123 of 2018) were only for grant of Service Element of Disability Pension for 13 years 7 months and 18 days service and the broad banding of the disability element that the applicant is already getting.

2. It has been brought out by the counsel for the applicant that in the M.A. i.e. M.A. 145 of 2016 the applicant has sought for modification of the reliefs of the O.A. only to that extent and not sought for granting of Ex-serviceman status as the same is an

automatic outcome of granting of PPO and pension by the respondents and that since the applicant has already been granted PPO, he was consequentially deemed to be an Ex-Serviceman with all privileges thereof. Hence, the applicant has not prayed for the same in his O.A. after receiving the PPO.

3. We had sought comments from the Respondents. OIC, Legal Cell has produced Signal No. 8072/LGL from AMC Records to H.Q. Bengal Area, Legal Cell in which it has been stated that in accordance with the Government of India (MOD)(Army) letter No. 12 (1)/2005/D(RES-I) dated 7th July, 2014 and Gazette of India Para GSR 757 (E) C (A) dated 4th October 2012, the petitioner would be treated as Ex-Serviceman as Disability Element has already been granted to him vide PCDA(P) Allahabad No. PPO No. S/26698/2016 (Army).

4. In the light of the above, we have reviewed our order dated 08 Mar 2019 and have directed that the following amendments be made as given out in the succeeding paragraphs.

5. Para 1 of the order to read as under:-

This O.A. is filed Under Section 14 of the AFT Act under which the applicant has prayed for the following reliefs:-

- (i) That the applicant be granted service element disability pension at proportionate rate for his 13 years 7 months 18 days of colour service.
- (ii) The commutation of pension of the applicant as is revealed from the PPO be declared as illegal and unauthorized and
- (iii) The respondents concerned be directed to give the benefits of rounding off disability element from 40% to 50%.

6. Para 2 to read as: Both the M.A. 145 of 2016 and M.A. 123 of 2018 as well as O.A. 26 of 2016 have been considered by us.

7. Para 3. No change.

8. Para 4. No change.

9. Para 5. No change.

10. Para 6. No change.

11. Para 7. No change.

12. Paras 8 & 9. Delete.

13. Para 10. No change.

14. Para 11. To read as under:-

O.A. 26 of 2016 is partially allowed as indicated above in Para 11. In so far as commutation of pension is concerned, the respondents are directed to follow the policy in this regard.

15. Para 12. No change.

16. With the above directions RA 03/2019 is disposed off.

17. No order as to costs.

(Lt Gen Gautam Moorthy)
Member (Administrative)

(Justice Indira Shah)
Member (Judicial)

DC