

EX. LT. COL. R. K. RAI

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v.

UNION OF INDIA & ORS.

(Civil Appeal Nos. 3101-3102 of 2015)

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FEBRUARY 16, 2018

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

*Armed Forces – Pension Regulations for the Army, 1961 – Regulations 48, 50 – Disability pension – Entitlement to – Appellant, commissioned in the Artillery Regiment, fell ill while performing the duty of Observation Post Officer – Medical Board opined that medical disability was due to stress and strain of services – Appellant applied for premature retirement and retired on 29.07.2003 – Medical Board assessed appellant’s disability at 30% – O.A filed by appellant before Armed Forces Tribunal for grant of medical disability pension, rejected on ground that it cannot be granted to the appellant as he had taken voluntary retirement much before the cut off date for grant of disability pension, i.e. 01.01.2006 – Review petition also dismissed – On appeal, held: Government of India issued order dated 19.05.2017 extending the benefit of disability pension to Armed Forces Personnel, who retired/discharged from service even before 01.01.2006 – Appellant fulfills all the three conditions for grant of disability pension and is fully covered by Government order dtd. 19.05.2017 – Judgments of the Tribunal are set aside – Respondents are directed to process the claim of appellant as per Government order dtd. 19.05.2017 – However, it shall always be open for respondents to assess the percentage of disability of appellant by convening a Medical Board to find out whether the disability percentage is 20% or less and discontinue the claim from any future date if disability has gone below 20% – Service Law – Military Service.*

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**Allowing the appeals, the Court**

**HELD: 1.1 Para 3 of the Government Order dated 19.05.2017 provides that the extension of benefits to those officers who retired Pre-2006 is on following conditions:-**

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- A (a) Their disability was accepted as attributable to or aggravated by military service
- (b) They had foregone lump sum compensation in lieu of that disability
- B (c) The concerned Armed Forces Personnel should still be suffering from the same disability which should be assessed at 20% or more on the date of effect of this letter. [Para 8][675-E-F]

C 1.2 In the opinion of the Medical Board, Primary Hypertension of the appellant was aggravated by Army service and the reasons given are “due to stresses & strains of military service”. It is clear that disability of the appellant was aggravated by military service and percentage of disability was 30%. Para 5 of the Order of the Government dated 19.05.2017 provides that claim for grant of disability element in affected cases will be submitted along-with copy of medical board/ fresh medical board proceedings showing extent of disability applicable as on date of effect of this letter in respect of Commissioned officers/ JCOs/ ORs. Para 7 of the order mentions that “The provisions of this letter shall take effect from 01.01.2006.” Thus, the disability for the purposes of the order dated 19.05.2017 has to be looked into on the date of 01.01.2006. This is also decipherable from Para 3 of the order. [Paras 9, 11 and 12][675-G-H; 677-A-C]

F 1.3 The Release Medical Board on 31.03.2004 adjudicated the appellant’s disability at 30%, which disability was held to be permanent in nature. The appellant who appeared in person made a statement that he had not taken any lump sum compensation in lieu of disability. There is no reason not to accept his statement. The appellant thus fulfills all the three conditions for grant of disability pension. The appellant is fully covered by the order of the Government dated 19.05.2017. Appropriate steps be taken in accordance with Para 5 for grant of disability pension. However, it shall always be open for the respondents to assess the percentage of the disability of the appellant by convening a Medical Board to find out whether the disability percentage is 20% or less. It will be open to the respondents to discontinue the claim

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from any future date when they on the basis of any medical report are of the view that the disability has gone below 20%. [Paras 13, 14][677-D-F] A

1.4 In so far as the case of “AGI Disability” as prayed by the appellant before this Court, a perusal of the order of the Tribunal rejecting the claim does not indicate that the said claim was pressed before the Tribunal. In the Review Petition also, the appellant does not appear to have pressed the said claim. Thus, it is not necessary to consider the said claim in these appeals. However, liberty is reserved to the appellant to file a Review Petition before the Tribunal, in event, the claim was pressed and not considered. [Para 15][677-G-H] B C

*Union of India v. Ajay Wahi* (2010) 11 SCC 213 : [2010] 7 SCR 777 ; *Lt. Col. P.K.Kapur (Retd.) v. Union of India* [Decision of Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 139 of 2009] ; *Maj. (Retd.) Rajesh Kumar Bhardwaj v. Union of India* [Decision dated 07.02.2012 of Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 336 of 2011] – referred to. D

#### Case Law Reference E

[2010] 7 SCR 777 referred to Para 1

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3101-3102 of 2015. F

From the Judgment and Orders dated 20.09.2013/20.01.2014 in Original Application No. 25 of 2013/ Miscellaneous Application No. 65 of 2013 in Original Application No. 25 of 2013 and final Order dated 11.06.2014 in Review Application No. 4 of 2014 of the Armed Forces Tribunal Regional Bench at Mumbai. G

Lt. Col. R. K. Rai, Petitioner-in-person.

Sanjai Kumar Pathak, Parnay Ranjan, Mukesh Kumar Maroria, Ms. Binu Tamta, Ms. Anjali Bora, Dhruv Tamta, Advs. for the Respondents. H

A The Judgment of the Court was delivered by

**ASHOK BHUSHAN, J.** These two appeals have been filed by the appellant challenging the orders dated 20.09.2013 passed by the Armed Forces Tribunal Regional Bench at Mumbai rejecting Petitioner's O.A. No. 25 of 2013 and the order dated 11.06.2014 rejecting the Review

B Application No. 4 of 2014. The brief facts of the case are:

The appellant was commissioned in the Regiment of Artillery on 24.12.1982. In the year 1987, while performing the duty of Observation Post Officer, the appellant fell ill, who was treated in Military Hospital, Devlali. Medical Board was held on 21.01.1988, when he was placed on low medical category. Medical Board opined that disability was due to stress and strain of services. On 27.09.2000, the Medical Re-categorization Board assessed the appellant's disability as 50%. In the year 2002, appellant was posted at Zakhama in Nagaland. Medical Re-categorization Board held on 20.09.2002 again assessed the medical disability of the appellant as 50%. On 06.02.2003, appellant applied for premature retirement. Appellant was retired on 29.07.2003. Release Medical Board held on 31.03.2004, found that the appellant was suffering from primary Hypertension, aggravated due to stress and strain of military service. Disability was assessed at 30%. The appellant filed O.A. No. 25 of 2013 in the Armed Forces Tribunal, Regional Bench, Mumbai, where he prayed for following reliefs:-

**"Relief Sought**

In view of the facts mentioned in this Original Application, the Applicant most respectfully prays for the following reliefs:-

F A. That the Hon'ble Court be pleased to direct Respondent No.1 to forward medical disability pension claim to Respondent No.2 directing the latter to grant medical disability pension to the Applicant at the earliest.

G B. That the Hon'ble Court be pleased to pass necessary direction to Respondent No.2 to release the medical disability pension in respect of the Applicant at the earliest.

C. That the Hon'ble Court be pleased to pass necessary direction to Respondent No.3 to grant "AGI Disability" as applicable to the Applicant at the earliest.

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D. That the Hon'ble Court be pleased to grant such other and further reliefs as deemed fit in the interest of justice.” A

The Armed Forces Tribunal *vide* its judgment dated 20.09.2013 rejected the application. The Tribunal relying on Regulation 48 and Regulation 50 of Pension Regulations for the Army, 1961 held that those, who took voluntary retirement are not entitled for disability pension. The Tribunal, however, noticed that on the basis of Sixth Pay Commission Report, an officer, who seeks voluntary retirement on or after 01.01.2006 and whose disability is 20% or more, either attributable to or aggravated by military service, will be entitled to disability pension. However, that benefit cannot be granted to the Applicant, because he had taken voluntary retirement much before the cut off date of 01.01.2006. The appellant filed a Review Petition before the Tribunal relying on few judgments of this Court as well as judgments of Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 139 of 2009, ***Lt. Col. P.K. Kapur (Retd.) Vs. Union of India***. In the Review Petition, the petitioner relied on the judgment of Principal Bench which held that the cut off date making difference between the personnel, who retired before 01.01.1996 and after 01.01.1996, is discriminatory and arbitrary. The Tribunal relying on the judgment of this Court in ***Union of India Vs. Ajay Wahi (2010) 11 SCC 213*** rejected the Review Petition. Aggrieved against dismissal of his O.A. as well as the Review Petition, the appellant has filed these appeals. B  
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2. The appellant, Ex. Lt. Col. R.K. Rai has appeared in person. We have also heard learned counsel appearing for the Union of India as well as learned counsel appearing for the respondent No.5.

3. The appellant appearing in person contends that in view of the judgment of Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 139 of 2009, ***Lt. Col. P.K. Kapur (Retd.) Vs. Union of India*** and judgments of Armed Forces Tribunal, Regional Bench, Chandigarh as well as judgment of Regional Bench, Chennai, those officers, who have taken voluntary retirement even prior to 01.01.2006 have been granted the disability pension. He submits that the Principal Bench, New Delhi in O.A. No. 139 of 2009 has already struck down Para 2.1 of the Government Circular dated 04.05.2009. The appellant submits that judgment of Principal Bench, New Delhi in O.A. No. 336 of 2011, ***Maj. (Retd.) Rajesh Kumar Bhardwaj Vs. Union of India & Ors.*** dated F  
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A 07.02.2012 has been accepted by the Government of India and now an order dated 19.05.2017 has been issued extending the benefit of disability pension to Armed Forces Personnel, who were retired, discharged from service even before 01.01.2006. He submits that in view of the order dated 19.05.2017, the appellant is entitled for disability pension. He further submits that in his original application, he has prayed for relief to grant “AGI Disability”, which has not been considered.

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C 4. Learned counsel for the Union of India refuting the submission of the appellant contends that against one of the judgments relied on by the appellant of the Armed Forces Tribunal; S.L.P. is pending in this Court. He further submits that from the order dated 19.05.2017, it is clear that the grant of disability pension to Pre-2006 retired/ discharged Armed Forces Personnel is subject to conditions as laid down in Para 3 and the appellant does not fulfil the conditions mentioned therein.

D 5. Learned counsel for the respondent No.5 submits that no notice was served to respondent No. 5 before the Armed Forces Tribunal in O.A. No. 25 of 2013, hence no one could appear on behalf of the respondent No.5 and file the objection. It is submitted on behalf of respondent No.5 that there is no material available with regard to the claim of the appellant on “AGI Disability”. He submits that the order of the Tribunal does not even indicate that the AGI Disability claim was not even argued before the Tribunal. It was submitted by learned counsel for respondent No.5 that the appellant is not entitled for any “AGI Disability” and under the Army Group Insurance, fund whatever was due to the appellant has already been paid.

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F 6. We have considered the submissions of the appellant and the learned counsel appearing for the Union of India as well as respondent No.5 and have perused the records.

G 7. A copy of the order dated 19.05.2017 issued by the Government of India, Ministry of Defence has been submitted by the appellant to the Court, a copy of which has also been given to the learned counsel for the respondents. The Government of India, Ministry of Defence having accepted the claim of those officers, who took voluntary retirement prior to 01.01.2006, the claim of the appellant needs to be examined in view of the aforesaid order. It is useful to extract the entire Government Order dated 19.05.2017, which is to the following effect:-

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[ASHOK BHUSHAN, J.]

“No. 16(05)/2008/D(Pension/Policy) A  
Government of India  
Ministry of Defence  
Department of Ex-Servicemen Welfare  
New Delhi-110011

Dated 19th May 2017 B

To,

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

**Subject: Grant of Disability Element to Armed Forces Personnel who were retained in service despite disability attributable to or aggravated by Military Service and subsequently proceeded on premature/voluntary retirement prior to 01.01.2006.** D

Sir,

The undersigned is directed to refer to this Ministry's letter E  
No.16(5)/2008/ D(pen/Policy) dated 29th September 2009 wherein  
disability element/war injury element have been allowed to such  
Armed Forces Personnel who were retained in service despite  
disability and retired/discharged voluntary or otherwise in addition  
to retiring/ service pension or retiring/ service gratuity, subject to F  
condition that their disability was accepted as attributable to or  
aggravated by military service and had foregone lump sum  
compensation in lieu of that disability.

2. In terms of Para- 3 of the above referred letter the provisions G  
stated above are applicable to the Armed Forces Personnel who  
were, retired/discharged from service on or after 01.01.2006.  
Armed Force Tribunal (Principal Branch) New Delhi in OA No.  
336 of 2011 vide their order dated 07.02.2012 have struck down  
Para-3 of this Ministry's above letter.

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- A 3. The issue of extension of above benefit to the Pre-2006 retired/  
discharged Armed Forces Personnel, who were retained in service  
despite disability attributable to or aggravated by military service,  
was under active consideration of Government. Now, the President  
is pleased to decide that all Pre- 2006 Armed Forces Personnel  
B who were retained in service despite disability and retired  
voluntarily or otherwise will be allowed disability element/war injury  
element in addition to retiring/ service pension or retiring/ service  
gratuity, subject to the condition that their disability was accepted  
as attributable to or aggravated by military service and had  
C foregone lump sum compensation in lieu of that disability. Further,  
concerned Armed Forces Personnel should still be suffering from  
the same disability which should be assessed at 20% or more on  
the date of effect of this letter.
- D 4. Implementation of these orders is expected to be arduous and  
challenging. Documents like Medical Board proceedings, retention  
of the personnel in service despite disability, option of individual  
foregoing lump sum compensation and non-payment of lump sum  
compensation would be required in all cases which may not be  
E available at the end of Pay Accounting Authorities/ Record offices  
and Pension sanctioning authorities readily. In such cases,  
pensioners/ family pensioners may be asked to produce the copies  
of relevant documents to the Executive authorities in support of  
their claims.
- F 5. The claim for grant of disability element/ war injury element in  
affected cases will be submitted to the PSA concerned by  
PCDA(O) Pune/ NPO/AFCAO/ Record office along-with copy  
of medical board/ fresh medical board proceedings showing extent  
of disability applicable as on date of effect of this letter in respect  
of Commissioned officers/ JCOs/ ORs. It will be responsibility of  
PCDA(O) Pune/ NPO/ AFCAO and Record office to confirm  
G payment/ non- payment of lump sum-compensation in lieu of  
disability element to Commissioned officers and JCOs/ ORs. A  
sanction showing extent of disability and its attributability/  
aggravation due to Military service in terms of MOD letter No.  
4684/DIR(PEN)/2001 dated 14.08.2001 would be issued by the  
Service HQrs in case of Commissioned Officers and sanction  
would be issued by IO/ C Record office in case of JCOs/ ORs.  
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[ASHOK BHUSHAN, J.]

6. The corrigendum PPOs granting disability element/ war injury element in all affected cases will be issued by respective Pension Sanctioning Authorities. A

7. The provisions of this letter shall take effect from 01.01.2006.

8. Pension Regulation of all the three services will be amended in due course. B

9. This Issues with the concurrence of Finance Division of this Ministry their letter I.D. No. 10(3)2012/FIN/PEN dated 19th May 2017.

10. Hindi version will follow. C

Yours faithfully

Sd/-

(Manoj Sinha)

Under Secretary to the Government of India” D

8. Para 3 of the Government Order provides that the extension of benefits to Pre-2006 retired is on following conditions:-

(a) Their disability was accepted as attributable to or aggravated by military service E

(b) They had foregone lump sum compensation in lieu of that disability.

(c) The concerned Armed Forces Personnel should still be suffering from the same disability which should be assessed at 20% or more on the date of effect of this letter. F

9. The appellant has relied on the Release Medical Board proceeding dated 31.03.2004 which has been brought on record as Annexure A/14. A perusal of the opinion of the Medical Board as contained in Part 5 of the document, makes it clear that opinion of the Medical Board is that Primary Hypertension of the appellant is aggravated by Army service and the reasons given are that “due to stresses & strains of military service”. It is useful to extract opinion of Medical Board in Part V, which is to the following effect:- G

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**Part V**  
**OPINIONS OF THE MEDICAL BOARD**  
**(Not to be communicated to the individual)**

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1. Clinical relationship of the disability with service condition or otherwise				
Disability	Attributable to service (Y/N)	Aggravated By Service (Y/N)	Not connected with service (Y/N)	Reason/ case specific conditions and period in service
(a) Primary HYPERTENSION	No	YES	No	Due to stresses & strains of mil service.

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10. Another part of the same opinion of Medical Board, which is with regard to percentage of disablement, is to the following effect:-

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1. What is percent degree of disablement as compared with a healthy person of the same age and sex? (Percentage will be expressed as Nil of as follows):- 1-5%, 6-10%, 11-14%, 15-19% and thereafter in multiples of ten from 20% to 100%.			
Disability assessment (As numbered in disabilities with Question 1 part II)	Percentage of disablement	Probable duration of this degree of disablement	Composite for all duration (Max 100%)
(a) Primary	30%	Permanent	30%
(b)			
(c)			
(d)		Sd/-x x x x MANOJ PAPRIKAR Maj.	Sd/- x x x x (Ms. Vandana Negi) Lt. Col.

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11. From the above, it is clear that disability of the appellant was aggravated by military service and percentage of disability was 30%. Para 5 of the Order of the Government dated 19.05.2017 provides that claim for grant of disability element in affected cases will be submitted to the PSA concerned by PCDA(O) Pune/ NPO/AFCAO/ Record office along-with copy of medical board/ fresh medical board proceedings showing extent of disability applicable as on date of effect of this letter in respect of Commissioned officers/ JCOs/ ORs. Para 7 of the order mentions that “The provisions of this letter shall take effect from 01.01.2006.”

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12. Thus, the disability for the purposes of the order dated 19.05.2017 has to be looked into on the date of 01.01.2006. The said conclusion is also decipherable from Para 3 of the order.

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13. From the above, it is clear that Release Medical Board (Annexure A/14) adjudicated the appellant’s disability at 30%, which disability has been held to be permanent in nature. The appellant who appears in person makes a statement that he has not taken any lump sum compensation in lieu of disability. We have no reason not to accept his statement.

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14. The appellant thus fulfils all the three conditions for grant of disability pension. In above view of the matter, we are of the view that appellant is fully covered by the order of the Government dated 19.05.2017. Appropriate steps be taken in accordance with Para 5 for grant of disability pension. We, however, make it clear that it shall always be open for the respondents to assess the percentage of the disability of the appellant by convening a Medical Board to find out whether the disability percentage is 20% or less. It will be open to the respondents to discontinue the claim from any future date when they on the basis of any medical report are of the view that the disability has gone below 20%.

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15. In so far as the case of “AGI Disability” as prayed by the appellant before us, a perusal of the order of the Tribunal rejecting the claim does not indicate that the said claim was pressed before the Tribunal. In the Review Petition also, the appellant does not appear to have pressed the said claim. We, thus, do not find it necessary to consider the said claim in these appeals. However, liberty is reserved to the appellant to file a Review Petition before the Tribunal, in event, the claim was pressed and not considered.

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A           16. In result, the civil appeals are allowed. Judgment and order of the Tribunal dated 20.09.2013 and 11.06.2014 are set aside. The respondents are directed to process the claim of the appellant as per the Government order dated 19.05.2017 in light of the observations as made above.

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Divya Pandey

Appeals allowed.