

**ARMED FORCES TRIBUNAL, REGIONAL BENCH CHANDIGARH
AT CHANDIMANDIR**

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OA 2029 of 2019

Thursday, the 04th day of May, 2023

CORAM:

**HON'BLE MR JUSTICE DHARAM CHAND CHAUDHARY, MEMBER (J)
HON'BLE LT GEN (Dr) RANBIR SINGH, MEMBER (A)**

Ex Cpl Kishor Chandra Mohanty Applicant

(By JP Sharma, Advocate)

Versus

Union of India and others Respondents

(By Vikas Sharma Sr PC)

-.-

ORDER

Justice Dharam Chand Chaudhary, Member (J) Oral:-

In this application, following directions have been sought to be passed against the respondents:-

- (i) to quash and set aside the order dated 22.11.2017 (Annexure A-1) whereby the claim of the applicant for the grant of **service element** has been wrongly rejected by the respondents;
- (ii) to direct the respondents to grant him the **service element** of disability pension also from the date of his discharge i.e. **17.03.2007**;
- (iii) to pass any other and further order or direction which this Bench deem fit and proper in the given facts and circumstances of this case.

2. The applicant was enrolled in the **Indian Air Force on 11.07.1995** in a fit state of health and discharged on **17.03.2007 on his own request**. He had rendered **11 years , 08 months and 05 days** service as per the Discharge slip Annexure A-2. He was granted disability element of disability pension vide PPO **Annexure A-3**. Before Discharge, he was brought before the Release Medical Board and the disability he incurred upon namely "**Traumatic Synovitis RT Knee (OPTD)**" was assessed

@ 20% for life attributable to military service vide **Annexure A-4** . He has not been granted service element. He served the respondents with legal notice dated 18.10.2017 (Annexure A-5) for the grant of service element of disability pension but the same was rejected vide letter dated 22.11.2017 on the ground that he was not invalided out from service on medical ground , hence he is not entitled to the grant of service element as per Regulation 173 of the Pension Regulation for the Army 1961, hence this application.

3. In reply, the response of the respondents is that the applicant was enrolled in the Army **on 03.12.1994** and discharged from service on **16.03.2017 at his own request before fulfilling the conditions of his enrolment after rendering total 11 years and 246 days of regular service**. As per the Injury Report, the applicant while returning back from duty on **20.01.2001** on his motor cycle skidded **down and sustained Injury which was assessed @ 20% for life and attributable to military service**. It is pleaded that under Rule 153 of Pension Regulations for IAF, 1961 (Part-1), Primary conditions for the grant of disability pension is that the same may be granted to an individual who has been invalided from service on account of a disability which is attributable to or aggravated by Air Force Service and assessed at 20% or more. The disability is attributable to or aggravated by Air Force Service has to be determined under the regulations in Appendix II" (i.e. Entitlement Rules). Para 121 of Pension Regulation, unless otherwise provides for, the minimum qualifying regular service for earning a service pension is 15 years. It is further pleaded that since he has not completed the tenure of 15 years of service, he

is not entitled to service element. The application as such has been sought to be dismissed.

4. We have heard learned counsel representing the parties on both sides and also gone through the record.

5. The only grouse of the applicant in this case is that he has not been granted **service pension** whereas disability element of disability pension has already been granted. The stand taken by the respondents for rejection of the claim of the applicant is that he has not completed the qualifying service 15 years as he has rendered only 11 years and 246 days service. **Also that he has been discharged at his own request and not invalided out which is a condition prevalent for the grant of service pension.** The learned counsel representing the applicant has pressed into service Annexure A-1 which is reply to the legal notice in which the respondents have clearly mentioned in para 4 that the applicant has been invalided out from service on medical grounds. This document demolishes the stand of the respondents that the applicant has been discharged from service well before the completion of 15 years service hence not entitled to the grant of service element.

6 It is also relevant to go through **Regulation 179 of Pension Regulations for the Army, 1961** which reads as follows:-

179. "An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or attaining the age of 50 years irrespective of their period of engagement, if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement. If the accepted degree of disability is less than 20 per cent or more and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity, if already

sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.

(2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/ discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease.”

7 Learned counsel representing the applicant has placed reliance on the decision of the Hon’ble Apex Court in **Union of India Versus V.R. Nanukuttan Nair decided on 07.11.2019 (Annexure A6/R)** In that case also the applicant was discharged from service on completion of 10 years and 169 days service and solitary stand taken by the respondents therein was that since he has been released before completion of qualifying service of 15 years for pension and was not invalidated out of service on account of the disability he incurred, he is not entitled to the grant of service pension. The Hon’ble Apex Court while discussing the facts in detail has dismissed the Appeal filed by the **Union of India** and directed the respondents to pay the service element also to the applicant. Relevant part of this judgment reads as follows:-

“It, thus, transpires that by judicial interpretation, words cannot be added to a statute, which would include the Rules, Regulations and Instructions issued under a Statute, as an excuse to give effect to its plain meaning of the language of the regulations. If the legislature has left a lacuna, it is not open to the Court to fill it on some presumed intention of the legislature. But where the Courts find that the words appear to have been accidentally omitted, or if adopting a construction deprives certain existing words of all meaning, it is permissible to supply additional words but should not easily read words which have not been expressly enacted. The Court should construct the provisions harmoniously having regard to the context and the object of the statute in which a provision appears, to make it meaningful. An attempt must always be made so to reconcile the relevant provisions, so as to

advance the remedy intended by the statute. Thus, it is not possible to read completion of qualifying service in Regulation 105B of the Regulations.

19) In view of the principles of interpretation relating to *Casus Omissus*, we find that a reading of the Regulations does not lead to an inference that the service element should be limited to an individual who has completed minimum 15 years of engagement. Regulation 78 cannot be read into Regulation 105B when no such qualification is provided in Regulation 105B.

20. Still further, the Regulation 107 providing service element in the event of an individual who has not completed the qualifying service will become otiose. A reading of all the regulations harmoniously and keeping in view the object of grant of disability pension, we find that the interpretation which advances the object and purpose of the grant of disability needs to be accepted being a beneficial provision for a class of individuals who have suffered disability in the course of duty.

21) The quantification of disability pension in the cases of an individual, who has not completed qualification service is dealt with in Regulation 107 Sub-clause (a) of Clause (1) of Regulation 107 deals with the situation where the individual has rendered sufficient service to qualify for a service pension i.e. 15 years of service in terms of Regulation 78. However, sub-clause (b) comes into play where the individual has not rendered sufficient service to qualify for service pension. In cases where the disability was suffered while flying or parachute jumping, the minimum service pension is appropriate to his rank and group but in all other cases, the service pension is restricted to minimum of two-thirds of the minimum service pension. For such reason, the disability element would be in addition to the service pension by cumulative reading of Regulation 78, Regulation 105B and Regulation 107 of the Regulations. The service pension is to be assessed on the basis of the minimum service pension laid down for an able individual of the same group in Regulation 107 of the Regulations.

22. Learned counsel for the appellants refers to an order passed by this Court in *Bhola Singh v Union of India & Ors.*⁷ We find that 7 Civil Appeal No. 4486 of 2002 decided on 10th August, 2010 this Court has not referred to Regulation 105B as well as Regulation 107 of the Regulations to maintain an order of the High Court to deny service element of pension to an individual who has completed the initial fixed period of 10 years. Since the

appeal has been decided without any reference to statutory regulations, we find that the reliance of the appellants on the said order is not helpful to the arguments advanced. We find that the reliance on the judgment of this court TS. Das is not tenable for the reason that it was not the case of grant of disability pension. It was the case of grant of special pension.

23) In view of the above, we find no merit in the present appeals. the same are dismissed. The appellants shall pay the arrears of service element preferably within a period of four months from today in terms of directions issued by the Tribunal”.

8 In view of the above, the order under challenge in this application is neither legally nor factually sustainable. The same is, accordingly, quashed and set aside. Consequently, the applicant is held entitled to the **service pension also w.e.f. 18.03.2007.** The due and admissible arrears **which shall remain restricted to three years preceding the date of institution of this application i.e. 25.07.2019** be calculated up to date and released to the applicant within a period of three months from the date of receipt of certified copy of this order by learned Senior Panel Counsel / OIC, Legal Cell, failing which together with interest @ 8% per annum from the date of this order till the payment of entire amount.

9 The application is, accordingly, disposed of, so also the pending Misc. Application (s) if any.

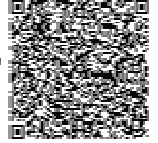
10 No order so as to costs.

(Lt Gen (Dr) Ranbir Singh)
Member (A)

(Justice Dharam Chand Chaudhary)
Member (J)

04th May, 2023
PK/DK

2025:PHHC:013199-DB

CWP-2412-2025 (O&M)
Date of Decision: 29.01.2025

Union of India and others

...Petitioners

Vs.

No.763665 Ex Cpl Kishor Chandra Mohanty and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present Mr. Ramesh Chand Sharma, Advocate for the petitioners.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The challenge is to the order passed by the Armed Forces Tribunal dated 04.05.2023, wherein the AFT directed as under:-

“In view of the above, the order under challenge in this application is neither legally nor factually sustainable. The same is, accordingly, quashed and set aside. Consequently, the applicant is held entitled to the service pension also w.e.f. 18.03.2007. The due and admissible arrears which shall remain restricted to three years preceding the date of institution of this application i.e. 25.07.2019 be calculated upto date and released to the applicant within a period of three months from the date of receipt of certified copy of this order by learned Senior Panel Counsel/OIC, Legal Cell, failing which together with interest @ 8% per annum from the date of this order till the payment of the entire amount.”

2. Learned counsel submits that the service pension requires qualifying service and the respondent was discharged on completion of 10 years and 169 days of service, therefore, he would not be entitled to service element. Learned counsel submits that the petitioner was getting disability pension and, therefore, there was no occasion of giving him service element.

3. We find the contentions raised before this Court to be wholly misconceived as an attempt has been made to mislead the Court. The provisions of the Pension Regulations for the Army, 1961, relating to pension specifically allow the service element to be counted for a person who has suffered disability while in service and is being discharged on that count. Thus, apart from disability element, the proportionate service element is also required to be counted as his service rendered with the armed forces cannot be set at naught. Regulation 183 of the Pension Regulations for the Army, 1961, deserves to be quoted:-

“183. The disability pension consists of two elements viz. service element and disability element, which shall be assessed as under: -

(1) Service element

<i>(a) Where the individual has rendered sufficient service to earn a service pension i.e. actual service is 15 years or more 20 years or more in the case of NCs(E)</i>	<i>(i) Equal to normal service pension relevant to the length of qualifying service actually, rendered, plus a weightage of 5 years as given in Regulation 136(a) or 146.</i>
<i>(b) Where the individual has not rendered sufficient service to qualify for a service pension.</i>	<i>(i) If the disability was sustained while on flying or parachute jumping duty in an aircraft or while being carried on duty in an aircraft under prop-</i>

	er authority: The minimum service pension appropriate to his rank (See regulation 180) and group, if any. (ii) In all other cases: Equal to the service pension as determined per Regulation 136 (a) or 146, but it shall in no case, be less than 2/3rd of the minimum service pension admissible to the rank/pay Group. It shall be further subject to a minimum of Rs.375/p.m.
Rank	Disability Element
JCOs granted Honorary Commission while on the effective list.	Rs.PM
JCOs	750/-
Other Ranks/NCs(E)	550/-
	450/-

For lower percentages of disablement down to 20 percent the rates will be proportionately reduced.

Provided that where permanent disability is not less than 60%, the disability pension (i.e., total of service element and disability element) shall not be less than the special family pension admissible vide Regulation 227 (b) i.e., it shall not be less than 60% of the reckonable emoluments Subject to a minimum of Rs.750/- P.M. and maximum of Rs.2, 500/- p.m. [Auth- MD letter No 1(5)/87/D- (Pension/Services) dated 30/10/871/

In case where an individual is invalided out of service before completion of his prescribed engagement/service limit on account of a disability which is attributable to or aggravated by

military service and is assessed below 20 percent, he will be granted an award equal to service element of disability pension determined in the manner given in Regulation 183 Pension Regulations for the Army Part I (1961), read with Appendix 'A' to AI I/S/75 and Annexure I & II to AI 3/S/75. This benefit will also be allowed in all cases where an individual is granted disability pension but whose degree of disablement subsequently falls below 20 percent.”

4. In view of the above, this writ petition is found to be wholly misconceived as an attempt has been made to ignore the provisions of the law which are existing. The writ petition is accordingly dismissed with costs of Rs.25,000/- to be paid to the respondent No.1. Compliance of the order shall be made positively within three months henceforth, failing which, the respondent No.1 shall be free to initiate contempt proceedings against the responsible officer, before this Court.

5. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

29.01.2025
rajesh

1. Whether speaking/reasoned?	:	Yes/No
2. Whether reportable?	:	Yes/No

ITEM NO.17

COURT NO.7

SECTION IV-D

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 57832/2025

[Arising out of impugned final judgment and order dated 29-01-2025 in CWP No. 2412/2025 passed by the High Court of Punjab & Haryana at Chandigarh]

UNION OF INDIA & ORS.

Petitioner(s)

VERSUS

KISHOR CHANDRA MOHANTY & ANR.

Respondent(s)

IA No. 274508/2025 - CONDONATION OF DELAY IN FILING

Date : 10-11-2025 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE ATUL S. CHANDURKAR

For Petitioner(s) :Mrs. Archana Pathak Dave, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mr. Jagdish Chandra, Adv.
Mr. Madhav Sinhal, Adv.
Mr. Kamal Ratan Digpaul, Adv.

Mr. Mukesh Kumar Maroria, AOR

For Respondent(s) :

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Heard the learned counsel appearing for the petitioners.

We are not inclined to interfere with the impugned judgment and order passed by the High Court.

The Special Leave Petition is dismissed and the accompanying interlocutory application(s), if any, stands disposed of.

(KAPIL TANDON)
COURT MASTER (SH)

(NIDHI WASON)
ASSISTANT REGISTRAR