

2024.PHHC:108727-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-19118-2024 (O&M)
Date of Decision: 20.08.2024**

UNION OF INDIA AND OTHERS

...Petitioners

Versus

DAULAT RAM NO 13730540 EX NB SUB AND ANR

...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Anil Chawla, Advocate ,
Senior Panel Counsel for the petitioners-Union of India.

SUDHIR SINGH, J.

The petitioners have filed the present writ petition for issuance of a writ in the nature of Certiorari quashing the order dated 14.03.2022 (Annexure P-1), passed by the learned Armed Forces Tribunal, Regional Bench Chandigarh at Chandimandir (for short 'the AFT'), whereby the Original Application filed by the respondent No.1, has been disposed of with a direction to the petitioners (respondents before the learned AFT) to process his claim in terms of judgment in O.A. No.324 of 2016 titled as Om Parkash Guleria Vs. Union of India & Ors. decided on 10.08.2018, upheld by the Hon'ble

Supreme Court in Union of India & Ors. Vs. Om Parkash Guleria in Civil Appeal No.(Diary No.9476/2021) dated 27.08.2021.

2. Learned counsel appearing for the petitioners submits that respondent No.1 (applicant before the learned AFT) was discharged from Armed Forces on 21.04.1973, at his own request after having rendered 05 years and 352 days of qualifying service. He was enrolled in DSC on 27.05.1974 and he had opted to count his previous service towards DSC service. He was discharged from DSC service on 31.05.1989, after rendering qualifying service of 20 years, 11 months, and 19 days, and he was granted service pension for life. It is further submitted that respondent No.1 was again re-enrolled in DSC on 21.12.1991, but he did not opt to count his previous service towards DSC and was unwilling to extend his service beyond the initial terms of engagement and accordingly, he was discharged from service w.e.f. 31.12.2001, after rendering 10 years and 11 days qualifying service for which he was paid service, gratuity, and death-cum-retiral gratuity being placed in a permanent low medical category w.e.f. 26.04.2001 and the Medical Release Board, assessed his disability as 'Pleura Pulmonary Tuberculosis and Viral Hepatitis', as aggravated by military service with 30% disability for two years and he was granted element of disability pension w.e.f. 01.01.2002 to 27.04.2003 and thereafter @ 40% w.e.f. 23.06.2003 for life. It is, thus, argued that since respondent No.1 had rendered only 10 years and 11 days of qualifying service with DSC (second term), he is not entitled to benefit of service element.

3. We have heard learned counsel for the petitioners and have also gone through the paper book, including the impugned order passed by the learned AFT.

4. A perusal of the impugned order would show that the learned AFT has disposed of the OA filed by respondent No.1 with the direction to the respondents to process his claim in terms of the judgment in Om Parkash Guleria case (supra), and release the claimed relief to him. The order in Om Parkash Guleria case (supra) was passed by the learned AFT on 10.08.2018. In the said case, the learned AFT has considered the question 'whether the applicant therein, who was in receipt of army pension at the time of his re-enrollment in the DSC, is entitled to the disability pension in the DSC service also?' The learned AFT after considering Regulation 179 of the Pension Regulation 1961, has observed as under:-

“For this purpose, the relevant Regulation 179 of the Pension Regulations for the Army, 1961 is pertinent to be mentioned which is as hereunder:-

“Disability at the time of retirement/discharge.

179. An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on 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 20 percent or more, and service element if the degree of disability is less than 20 percent. 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”.

Now the question arises as to whether this very provision is applicable in the case of DSC personnel. For this purpose, Regulation 266 of the above ‘Regulation for the Army, 1961’ is relevant which is quoted as under:-

General Provision

“266. The grant of pensionary awards to personnel of the Defence Security Corps shall be governed by the same general rules as are applicable to combatants of the Army, except where they are inconsistent with the provisions of the regulations in this chapter”.

From the above, it is clear that Regulation 179 is fully applicable in the case of DSC service. There is no dispute that the applicant was discharged in Low Medical Category and that there is also no dispute that he was discharged from DSC service on completion of terms of engagement. He was discharged from the DSC service but due to being in Low Medical Category, he could not be granted further extension in the DSC service. So, he shall be deemed to have been invalided out of service because of being placed in Low Medical Category and the authority concerned has already granted him disability element of disability pension which further fortifies this view that he was in Low Medical Category at the time of discharge from DSC service. There is also no dispute that the applicant was at the time of his discharge suffering with disability @ 40%(complete). So, by virtue of Regulation 179 above, he is entitled to disability pension consisting of service element as well as disability element.

Rule 280 of Pension Regulations for the Army related to DSC service personnel states that disability pensions consists of two element viz service element and disability pension. So, according to this Rule also, he is entitled to service element of disability pension. The mere fact that the applicant was in receipt of pension of the first spell of the Army service cannot be a ground to refuse him the disability pension for the second spell in the DSC

service. Our views find support from the judgment of this Tribunal rendered in **OA No. 146 of 2010 titled as Parbu Ram Vs. U.O.I. and others decided on 23.04.2010.**

The question now arises as to whether the applicant is entitled to the benefit of rounding off in this case by virtue of the judgment of the Hon'ble Supreme Court rendered in **Civil Appeal No. 418 of 2012 (Union of India and others vs. Ram Avtar) decided on 10.12.2014** and according to this judgment, the applicant is entitled to the benefit of rounding off. So, he is entitled to the benefit of disability pension @ 50% as against 40% for life.

The Original Application is, accordingly, allowed. The respondents are directed to calculate the arrears accordingly and to pay the same to the applicant within a period of three months from the date of receipt of a certified copy of this order by the learned counsel for the respondents/OIC, Legal Cell, failing which the arrears shall carry an interest @ 8% p.a. from the date of this order.

No order as to costs.”

5. The said order was challenged by the Union of India and others before the Hon'ble Supreme Court by way of Civil Appeal (Diary No.9346 of 2021). The Hon'ble Supreme Court, dismissed the same vide order dated 27.08.2021, by observing as under:-

- “1. Leave to appeal is granted.
2. Besides the delay of 515 days in filing the appeal, which has not been satisfactorily explained, even on merits, we find no error in the judgment dated 10 August 2021 of the Armed Forces Tribunal. The Tribunal has correctly construed the provisions of the pension regulations and the ultimate conclusion, entitling the respondent to the service element of the disability pension and the benefit of rounding off, does not suffer from any error.
3. The Civil Appeal is, therefore, dismissed on the ground of delay as well as on merits.
4. Pending applications, if any, stand disposed of.”

6. It may further be noticed that against the similar orders dated 05.08.2021 and 16.09.2021 passed by the Armed Forces Tribunal, Regional Bench Srinagar at Jammu, involving the same

question, the Civil Appeals filed by the Union of India, before the Supreme Court, have also been dismissed vide order dated 04.07.2023 and 25.03.2022.

7. The matter has attained finality with the dismissal of the Civil Appeals by the Hon’ble Apex Court. Therefore, we do not find that the impugned order passed by the learned AFT, wherein directions have been given to process the case of respondent No.1 in terms of the orders passed in Om Parkash Guleria’s case (supra), suffers from any illegality or perversity.

8. In view of the above, we do not find any merit in the present writ petition, the same is hereby dismissed.

[SUDHIR SINGH]
JUDGE

[KARAMJIT SINGH]
JUDGE

20.08.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No