



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: April 16, 2024

+ W.P.(C) 7898/2018

EX-LC SHREYA MANHAS

..... Petitioner

Through: Col. Indra Sen Singh, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mrs. Amrita Prakash, CGSC with
Mr. Vishal Ashwani Mehta, Adv. for
UOI with Major Partho Katyayan.

AND

+ W.P.(C) 10079/2020

AMIT JINDAL

..... Petitioner

Through: Mr. Mohan Kumar, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Jaswinder Singh, Adv.
with Major Partho Katyayan.

AND

+ W.P.(C) 10528/2020

NO. 38255 EX-CADET

(NDA) MALODE AKASH BHAUSAHEB

..... Petitioner

Through: Col. Indra Sen Singh, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Pradeep Kumar Jha, Sr. PC with
Mr. Karan Wadhwa, Adv. for UOI



with Major Partho Katyayan.

AND

+ W.P.(C) 6929/2021

EX-GC OTA AMIT KUMAR TES-2756

..... Petitioner

Through: Col. Indra Sen Singh, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Gigi C George, Adv. with
Mr. Dheeraj Singh, Adv. for UOI
with Major Partho Katyayan.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

V. KAMESWAR RAO, J

1. These petitions involve an identical issue whether the petitioners who were invalidated and released as cadets from Officers Training Academy ('OTA', for short) / National Defence Academy ('NDA', for short) and Indian Military Academy ('IMA', for short) are entitled to the benefit of government policy of broad banding / rounding off of their disability.

2. The case of the petitioners primarily is, they have been invalidated from NDA/OTA/IMA after they were found unfit for Army / Defence service on account of disability of "FRACTURE NECK OF FEMUR LT assessed @ 40% for life (in the case of petitioner W.P.(C) 7898/2018); FRACTURE NECK OF FEMUR (Left) with disability of



40%, later on revised to 60% (in the case of petitioner W.P.(C) 10079/2020); CHRONIC KNEE PAIN WITH FAT PAD SYNDROME(LT) KNEE (OPTD) assessed @ 20% (in the case of petitioner W.P.(C) 10528/2020) and (i) SPONDYLOLYSIS OF L5 (BILATERAL) and (ii) Grade-I ANTEROLISTHESIS @ 30% for life (in the case of petitioner W.P.(C) 6929/2021).

3. There is no dispute that the disability acquired by the petitioners herein is attributable to the training as a Cadet at IMA/NDA/OTA, to the extent stated above.

4. The ground on which the respondents have rejected the benefit of rounding off / broadbanding, the disability as 50% and 75% is that the broad banding is only applicable to commissioned officers who are invalidated from service. Since the petitioners have not been commissioned in the military service, the broad banding principle in respect of officers cannot be made applicable to the Cadets.

SUBMISSIONS:

5. The submission of Col. Indra Sen Singh, learned counsel appearing for the petitioners is that the petitioners were invalidated from the OTA/NDA/IMA on different dates after they were found unfit for Army / Defence service on account of the aforesaid disabilities.

6. His submission is that the rounding off / broad banding policy has been laid down by the Ministry of Defense, Government of India in the letter dated January 31, 2001. According to him, the only ground for rejecting the rounding off / broad banding is that the policy is only applicable to the officers. He stated, this ground of rejection has no reasonable nexus with the object sought to be achieved, to grant



appropriate ex-gratia disability award, when a cadet has actually suffered disability like the officers which is also attributable to military service.

7. Mr. Singh has relied upon the judgment of the Supreme Court in the case of *Union of India v. Ram Avtar, Civil Appeal No. 418/2010*. He also stated that the issue in hand is covered by the judgment of the Coordinate Bench of this Court in the case of *Puneet Gupta & Ors. v. Union of India, Civil Writ Petition No. 6466/2014* decided on July 12, 2016; order dated May 18, 2018 passed in *Review Petition No. 266/2017* in *W.P.(C) 6466/2014* and *Girish Kumar v. Union of India and Ors., OA 1439/2016* decided on December 1, 2017 and connected petitions decided by the AFT, Delhi.

8. On the other hand, submission of Mr. Jaswinder Singh, Advocate and Major Partho Katyayan is that the petitioners herein were ex-Cadets of NDA/IMA/OTA who are seeking the benefit of round off / broad banding of their disability @ 50% / 75% from the date of invalidity and release from NDA / IMA / OTA. According to them, the petitioners having been invalidated out of NDA / IMA / OTA on various dates as per the decision of the Medical Board for the disabilities stated above which though were attributable to the military service, but having not commissioned in the Army, no parity qua the Officers can be given to the Cadets, i.e., the petitioners herein. According to them, broad banding as a concept was introduced based on the recommendations of the 5th Central Pay Commission for Armed Forces personnel vide Ministry of Defence letter dated January 31, 2001. The broad banding was initially made admissible to regular



armed forces personnel who are invalidated due to disability attributable or aggravated by military service. Later it was extended to even those who are in service and released / superannuated / discharged with disability. Hence, according to him, broad banding concept is applicable to only regular services personnel and does not cover Cadets. Officer Cadets are granted ex-gratia award or invalidment due to disability attributable to military service. According to them, the training period of Cadets is not counted as service. They are paid stipend and not pay and allowances during training, as such the rounding off / broadbanding principle is not applicable. That apart, the pensionary benefits are linked to pay and allowances and Cadets are granted stipend during training period, instead of pay, they are not entitled to broadbanding of disability percentage as is granted to regular service personnel. They also stated that on invalidment they are not entitled to pensionary benefits, ESM Status and ECHS benefits. They stated, the disability has no restriction in respect of they taking civil employment.

9. According to them, MoD letter dated April 16, 1996 had provided the grant of ex-gratia award to the Cadets w.e.f. January 1, 1986. However, in case of recruits, the broad banding is extended to them since training of recruits is counted as service. They also stated, the case for grant of benefits as a special case was taken up with Ministry of Defence. However, the same was denied as the Ex Gentleman Cadets do not meet the twin criteria to qualify for ECHS benefits as they are not Ex-Servicemen and are not drawing pension. They also stated, reliance placed by Mr. Singh on the judgment in the



case of *Puneet Gupta (supra)* was in the context of Air Force Act and not Army Act. Even otherwise, the judgment needs reconsideration as the judgment allows rounding off / broad banding without considering the relevant submissions made by them in the present case.

10. Having heard the learned counsel for the parties and before we deal with the submissions made by Col. Indra Sen Singh, Mr. Jaswinder Singh and Major Partho Katyayan, it is necessary to reproduce the letter dated January 31, 2001, more particularly the provisions relating to rounding off of the pensionary awards in respect of the officers in the following manner:

“7.2. Where an Armed Forced personnel is invalidated out under circumstances mentioned in Para 4.1 above, the extent of disability or functional incapacity shall be determined in the following manner for the purposes of computing the disability element:

<i>Percentage of disability as assessed by invaliding medical board</i>	<i>Percentage to be reckoned for computing of disability element.</i>
<i>Less than 50</i>	<i>50</i>
<i>Between 50 and 75</i>	<i>75</i>
<i>Between 76 and 100</i>	<i>100</i>

”

11. It may also be stated here that Cadet who is invalidated out because of the disability attributable to the military service is entitled to ex-gratia disability award equivalent to disability and *ex-gratia* amount.

12. There is no dispute that ex-gratia disability award varies as per the disability suffered by a Cadet. It is also a conceded position except these two awards, a Cadet is not entitled to the benefit of ECHS or



ESM nor any other pensionary benefits.

13. The provisions for grant of ex-gratia awards in the cases of Death / Disablement of Cadets (direct) due to causes attributable to or aggravated by military service are provided under letter dated April 16, 1996 of the Ministry of Defence. Clause 2 thereof provides ex-gratia awards in cases of disablement. Clause 6 thereof also stipulates as under:

“Other rules and procedures regarding assessment / re-assessment on disablement and acceptance of disability / death as attributable to or aggravated by conditions of military service / training in case of Cadets shall be the same as for regular commissioned officers of the Armed Forces. The procedure for sanction and condition for grant of ex-gratia awards to the next keen in case of deceased Cadets shall be the same as in case of casualties of regular commissioned officers due to attributable causes.”

(emphasis supplied)

14. From the above, it follows that though the office memorandum dated January 31, 2001 is only qua pension and the petitioners as Cadets are not entitled to pension, but in any case, the petitioners are admittedly entitled to the disability element of pensionary benefits and as such the benefit has been granted to the petitioners as ex-gratia disability award. Surely the petitioners in terms of afore-quoted Clause 6 of the letter dated April 16, 1996 would be entitled to the benefit of Clause 7.2 of the subsequent office memorandum dated January 31, 2001. In fact in paragraph 31 of the judgment in the case of **Puneet Gupta (supra)**, the Coordinate Bench of this Court has held as under:

“31. The writ petition is accordingly disposed of directing the respondents to pay the ex-gratia amount at the rate



contemplated by the first limb of the policy circular dated April 16, 1996 as also and additional disability award on ex-gratia basis at the rate contemplated by the second limb of the same policy circular and while doing so to give effect to the Government of India memorandum dated January 31, 2001 i.e. notwithstanding the disability being assessed 20%, to grant the same by treating the disability at 50%.”

15. In fact, it is precisely for the above reason even the Review Petition filed by the respondents in that case, i.e., the Union of India was rejected by stating in paragraph 9 as under:

“9. We are of the opinion that though the Office Memorandum dated 31st January, 2001 is with respect to pensionary benefits only but since the petitioner is admittedly entitled to the disability element of the pensionary benefits and whereunder the claim of the petitioner has been allowed, the petitioner indeed, in terms of Clause 6 of the letter dated 16th April, 1996, would be entitled to the benefit in Clause 7.2 supra of the Office Memorandum dated 31st January, 2001.”

16. It is a conceded case of the respondents that the judgments rendered in both the writ petition dated July 12, 2016 and in the review petition dated May 18, 2018, respectively, have not been taken in appeal before the Supreme Court. So, it follows, the judgment dated July 12, 2016 has been implemented.

17. Hence, for parity of reasons and as the petitioners are also belonging to the Armed Forces, these writ petitions need to be allowed. It is ordered accordingly. The impugned order(s) are set aside. The respondents shall grant the benefit of rounding off / broad banding to the petitioners as per the policy dated January 31, 2001 from the date the petitioners were granted the *ex-gratia* disability award subject to



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adjustment of the payment already made with interest @ 6% per annum. The same shall be granted / released within a period of 8 weeks from today. The writ petitions are disposed of as allowed. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

APRIL 16, 2024/jg