



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-34901-2024
Reserved on: 20.12.2024
Pronounced on: 30.01.2025

UNION OF INDIA AND ORS.Petitioners

Versus

NO. 4079899 EX SEP ANUP SINGH AND ANR.Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Ramesh Chand Sharma, Advocate
for the petitioners/UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners herein-Union of India, prays for the setting aside/quashing of the order dated 06.03.2019 (Annexure P-1), as passed by the learned Armed Forces Tribunal concerned, whereby, the Tribunal has allowed the *Original Application bearing No.2711 of 2018*, thus filed by respondent No.1, rather for the grant of the service element of the disability pension.

Factual Background

2. Respondent No. 1 was enrolled in the Indian Army in a fit state of health on 06.07.1998. On 09.04.2008, while serving with 4 JAT, respondent No. 1 was tried by a summary court martial and was awarded punishment "**Dismissed From Service**" for an offence committed by him under AA Section 52(a). However, the Hon'ble Armed Forces Tribunal, Delhi vide order dated 29th March 2010, set



aside the supra awarded punishment to respondent No. 1 and reinstated respondent No. 1 into service w.e.f. 12th July, 2010. Subsequently, he was discharged from service on completion of his terms of engagement on 31st July 2015 (AN) under Rule 13(3) III (i) of the Army Rules, 1954 after rendering a total 17 years and 26 days of service. The Hon'ble Armed Forces Tribunal, New Delhi, while disposing TA No.168 of 2009 vide order dated 29.03.2010, had directed to reinstate respondent No. 1 in service, with liberty to the petitioner-Department to initiate Summary Court Martial proceedings against him and also held that respondent No. 1 shall not be entitled to back-wages, for the period from the date of his dismissal to reinstatement i.e. w.e.f. 09th April 2008 to 11th July, 2010 (i.e. for a period of 02 years and 94 days). Moreover, the said period was not reckonable towards the pensionable service of respondent No.1. The supra denial of relief to the present respondent was anchored on the ground that he had a shortfall of 67 days of service against the minimum qualifying period of service i.e. 15 years, to earn service pension and thereby he was declared to become not eligible for grant of service pension. Furthermore, there is no material on the record revealing that whether the Union of India had challenged the afore order of reinstatement of respondent No. 1 in service, as passed by the Tribunal concerned.

3. It is apt to mention here that prior to discharge of respondent No.1 from service, he was brought before a duly constituted Release Medical Board (RMB) held at 154 General Hospital Vide

AFMSF-16 dated 26th May, 2015. The release medical board assessed the disabilities entailed upon respondent No. 1 as under :-

Disability	Attributable to Military Service	Aggravated by Military Service	Percentage of disability assessed & duration	Composite assessment
Simple Obesity (e-66.9)	No	No.	1-5% for life	20% for life
PIVD L5-SI (M-51.9)	Yes	No.	20% for life	--
DYSLIPIDEMIA	No	No.	1-5% for life	--

4. Accordingly, the claim of respondent No.1, thus for the grant of disability pension was processed and he was accordingly granted disability element @ 20 % w.e.f. 01st August 2015 for life vide PCDA (P) Allahabad PPO NO. S/311 36/2016(Army) dated 05th August, 2016. However, respondent No. 1 was not granted service element for his service rendered in the Army on account of the shortfall of 67 days of service in the qualifying period of 15 years for his earning service pension.

5. Thereafter, respondent No.1 filed O.A. before the Hon'ble Armed Forces Tribunal (Principal Bench), New Delhi against the findings of the summary court martial held on 19th November, 2010 at 4 JAT. The said O.A. was disposed off with directions that respondent No.1 may submit an application to the authorities concerned, thus seeking condonation of the short fall of 67 days in the qualifying service of 15 years within a period of one month and if such an application is submitted by respondent No.1, thereupon, the petitioners will dispose of the said application within three months.



6. Further, respondent No.1 was communicated by the department concerned, that his application for condonation of 67 days of shortfall in service has been rejected by the competent authority vide letter dated 01.12.2018.

7. Feeling aggrieved, respondent No.1 filed Original Application No.2711 of 2018 before the learned Armed Forces Tribunal (Regional Bench), Chandigarh, wherebys, he cast a challenge to the afore said rejection order, wherebys, his shortfall of 67 days in service was not condoned by the competent authority. The said O.A. became allowed vide order dated 06.03.2019. The operative part of the said order is extracted hereinafter.

“Since the service of the applicant was less than 15 years so his case is covered by Regulation 183 (1)(b)(ii) mentioned herein above.

*The applicant was discharged from service on 31.07.2015, he is also entitled to the benefit of rounding off in terms of judgment of Hon'ble Supreme Court in **Civil Appeal 418 of 2012 Union of India Vs. Ram Avtar decided on 10.12.2014.***

In the result, this OA is allowed and the applicant is held entitled to the service element of the disability pension in accordance with Regulation 183(1)(b)(ii) of the Pension Regulations for the Army 1961 and rounding off benefit @50% against 20% disability w.e.f. 01.08.2015. The respondents are directed to make the calculation of the arrears accordingly and to pay the same to the applicant within a period of three months from the receipt of a certified copy of this order by the counsel for the



Respondents/OIC Legal Cell, failing which the arrears shall carry an interest @8% from the date of this order.”

8. The petitioners filed review petition seeking review of the order dated 06.03.2019, as passed by the Tribunal concerned, which was dismissed vide order dated 09.11.2022 and thereafter the petitioners filed application for seeking leave to appeal against the order dated 06.03.2019. However, the said application was also dismissed on 01.05.2023.

9. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the petitioner-Union of India has now filed thereagainst the instant writ petition before this Court.

Submissions of the learned counsel for the petitioners.

10. At the outset, the learned counsel for the petitioners submits that since respondent No.1 had a shortfall of 67 days of service against the minimum qualifying service i.e.15 years of service, to earn service pension, therefore, he is not entitled to the same.

Inferences of this Court.

11. Since the expostulations made in paragraph No. 12 of the judgment rendered by the Hon'ble Apex Court in case titled as **Union of India and Another Vs. Surender Singh Parmar**, reported in **(2015) 3 Supreme Court Cases 404**, paragraph whereof becomes extracted hereinafter, do invest jurisdiction in the Writ Court, to through judicial intervention, thus make the espoused condonation.

12. In view of the aforesaid provision, the respondent is also entitled to claim for condonation of shortfall in



qualifying service for grant of pension beyond six months and upto 12 months. If the aforesaid power has not been exercised by the competent authority in proper case then it was within the jurisdiction of the High Court or Tribunal to pass appropriate order directing the authority to condone the shortfall and to grant pension to the eligible person, which has been done in the present case and we find no ground to interfere with the substantive finding of the Tribunal. However as we find that the respondent was allowed to retire from service on 24th June, 1985 when the instruction dated 14th August, 2001 was not in existence, we hold that the respondent is entitled for such benefit from such date on which the said instruction came into effect. The Tribunal failed to notice the aforesaid fact but rightly declared that the respondent's shortfall in service stands condoned.

12. Consequently, the cumulative effect of the authoritative judicial pronouncement as carried in the above extracted paragraph, made in **Surender Singh Parmar's case (supra)**, thus completely countervails the supra argument raised before this Court, by the counsel for the petitioners, thus for denying to respondent No. 1, the benefit of the service pension for his serving in the Army, merely on the ground that he has not completed the qualifying period of service for earning service pension.

13. Even otherwise, since the present respondent No. 1 was discharged from service on account of a disability which was assessed @ 20 % besides when the said disability was declared to be attributable to military service. Moreover, since the respondent No. 1 was also granted the disability element of the disability pension. Therefore, he was to be governed by Regulation No.183 of the Pension Regulations for the Army, 1961 relevant provisions whereof are extracted hereinafter.



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

(1) Service element

(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)	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.
(b)	Where the individual has not rendered sufficient service to qualify for a service pension.	(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 proper 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.

Xxxxxxx

(2) Disability element

xxxxx xxxxx

14. A perusal of the supra extracted regulation, would reveal that the disability pension consists of two elements viz. service element and disability element and also prescribes the procedure for calculation of the same. Since the present respondent No. 1 incurred a disability



which rather incapacitated him to complete the requisite qualifying period of service to earn service pension, thereby, the case of respondent No. 1 falls within the realm of regulation No. 183(1)(b)(ii), as aptly done by the Tribunal concerned. Resultantly thereby, the supra shortfall of 67 days in the present respondent no. 1, rendering the minimal qualifying period of service extending upto 15 years, for thereby his earning service pension, but was required to be condoned.

15. Secondarily, since in terms of the judgment rendered by the Apex Court, in case titled as '**Union of India Vs. Ram Avtar**', reported in **2014 SCC Online 1761**, wherein, a declaration is made to the extent, that the benefit of rounding off, rather has to become endowed to the concerned. Resultantly also when thereunders an indefeasible right became vested in respondent No. 1 rather for his seeking qua the benefits of the apposite roundings off, thus being made in his favour. The relevant paragraphs as occur in the verdict (supra) are extracted hereinafter.

4. By the present set of appeals the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding-off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No. 1(2)/97/D(Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. We have heard learned counsel for the parties to the lis.

6. We do not see any error in the impugned judgment(s) and order(s) and therefore all the appeals which pertain to



the concept of rounding-off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.

16. Consequently, when the claim of respondent No. 1, is covered within the ambit of the supra declarations of law which are declarations in rem. In sequel, the benefit of the supra declarations in rem, as became endowed to the present respondent No. 1, under the impugned order, are to be construed to be well endowed benefits to respondent No. 1.

Final Order of this Court.

17. In aftermath, this Court finds no merit in the writ petition and with observations above, the same is dismissed.

18. The impugned order, as passed by the learned Tribunal concerned, is maintained and affirmed.

19. Disposed of alongwith all pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

30.01.2025
Anjal/Kavneet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No