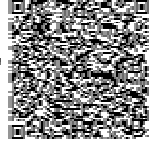


2025:PHHC:013199-DB

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>

	<p><i>er authority:</i></p> <p><i>The minimum service pension appropriate to his rank (See regulation 180) and group, if any.</i></p> <p><i>(ii) In all other cases:</i></p> <p><i>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.</i></p>
<i>Rank</i>	<i>Disability Element</i>
<i>JCOs granted Honorary Commission while on the effective list.</i>	<i>Rs.PM</i>
<i>JCOs</i>	<i>750/-</i>
<i>Other Ranks/NCs(E)</i>	<i>550/-</i>
	<i>450/-</i>

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