

Reserved

**COURT NO.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****O. A. No. 403 of 2018**Friday, this the 31<sup>st</sup> day of August, 2018**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

No JC-329713N Ex Sub Chandreshwar Mishra, S/o Shri Sheo Mangal Mishra, R/o 113/6, Vishnapuri Colony Ponghat, Pool Lane No 19, Mundera Chungi Barmrauli, Allahabad- 211012 (UP).

**.... Applicant**

Counsel appeared - Shri R. Chandra, Advocate  
for the applicant

Versus.

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi- 110011.
2. Officer-In-Charge, Bengal Engineer Group Records, PIN 908779, C/o 56 APO
3. The Chief Controller Defence Accounts, Draupadi Ghat Allahabad – 14 (U.P.)

**.....Respondents**

Counsel appeared for - Shri Arun Kumar Sahu, Advocate,  
Respondents

**“(Per Justice SVS Rathore, Member (J))”****ORDER**

1. Being aggrieved by the denial of rounding off of his disability pension from 20% to 50%, the applicant has approached this Tribunal by means of present O.A. under Section 14 of the Armed Forces Tribunal Act, 2007. Applicant has prayed for the following reliefs:-

“(I) The Hon’ble Tribunal may kindly be pleased to direct the respondents to grant the benefit of rounding of the disability pension to the applicant from 20% to 50% w.e.f. 01.04.2013 alongwith the arrears including interest at the rate of 24 percent per annum.

(II) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.”

2. The brief facts of the case, as borne out from the pleadings of the parties are that the applicant was enrolled in Army on 23.03.1983 in Bengal Engineer Group. He was discharged after rendering 30 years and 08 days of service on 31.03.2013. Applicant was granted disability element of 20% for life for disability Type-2 DM, vide PPO No S/CORR/51298/2013 dated 18.12.2013, a copy of which has been filed as Annexure No.A-1 to the petition. The Release Medical Board viewed his aforesaid disability as aggravated by military service.

3. Feeling aggrieved against the inaction of the respondents in not giving the benefit of rounding off of his disability pension from 20% to 50% pursuant to Hon’ble Supreme Court decision, applicant preferred an appeal on 11.07.2017, contained in Annexure-A-2 before the respondents for rounding off his disability pension. When the applicant did not receive any reply to the aforesaid appeal, he approached the respondent no.3 personally in December, 2017. Applicant was told orally that since he was discharged after completion of his normal term of service, he is not entitled for the benefits of rounding off of his disability pension.

4. The Release Medical Board held before discharge of the applicant held his aforesaid disability as aggravated by military service, opining the

disability of the applicant as 20% for life. Accordingly, the Applicant was sanctioned disability pension at the rate of 20% for life.

5. As per office report there is delay of 04 years, 09 months and 10 days. Hence the matter was heard on condonation of delay and the delay was condoned vide order dated 27.08.2018.

6. We have heard learned counsel for the applicant as also, Ld. Counsel for the respondents and perused the record. We have also perused the PPO (Annexure –A-1 to O.A) vide which the applicant is in receipt of 20% disability pension.

7. In the instant case, the respondents have not filed the counter affidavit and have fairly admitted that the applicant is in receipt of 20% disability pension as per PPO (Annexure –A-1 to O.A). According to the applicant as per policy of Broad Banding/ Rounding Off Pension Scheme of the respondents the incumbent whose disability percentage is less than 50% is to be rounded off to 50% and is entitled to get disability pension @ 50%. While refuting the case of the applicant it has been submitted on behalf of the respondents that the applicant is not entitled to the benefit of rounding off of his disability pension since he was discharged after rendering 30 years and 08 days of his normal period of service.

8. On the issue of rounding off of disability pension, we are of the opinion that the instant case falls within the four corners of the decision in the case of ***K.J.S. Buttar vs Union of India and ors***, (2011)11 SCC 429 and Review Petition (C) NO. 2688 of 2013 in Civil Appeal No. 5591/2006, ***Union of India & anr vs. K.J.S.Butter*** and ***Union of India***

**vs. Ram Avtar & ors** (Civil Appeal No. 418 of 2012 decided on 10<sup>th</sup> December, 2014.

9. In view of the aforementioned decision of Hon'ble Court in **Union of India vs. Ram Avtar & ors** (Civil Appeal No. 418 of 2012 decided on 10<sup>th</sup> December, 2014 the applicant is fully entitled to the benefit of rounding off of his disability pension.

10. As to the period of entitlement of the applicant to receive arrears of disability pension, the larger Bench of Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 1439 of 2016, **Ex Sgt Girish Kumar vs. Union of India & Ors** relying upon the decision of Hon'ble Apex Court in the case of **Davinder Singh vs. Union of India & Ors** (C.A. No. 9946 of 2016) decided on 20.09.2016 has held that the benefit of broad banding of disability/war injury element of pension will be with effect from 01.01.1996. The relevant portion of the Full Bench decision in the case of **Ex Sgt Girish Kumar** (supra) is reproduced as under :-

*“55. After having fully discussed the issue involved before us and to set the controversy at rest vis-à-vis arrears of broad banding of the disability/war injury element of disability pension on the ground of delay in filing application(s) by the individual/applicant(s), we conclude grant of arrears of broad banding of disability pension, stands answered in the fact that all applicants will be entitled to broad banding of disability/war injury element of pension with effect from 01.01.1996, irrespective of whether they retired pre-1996 or post-1996 without any restriction of arrears of three years.”*

11. In view of the above the Original Application deserves to be allowed. Accordingly the O.A. is **allowed**. The disability pension which was assessed as 20% for life shall stand rounded off to 50% for life from the date of discharge i.e. 01.04.2013. The respondents are further

directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

12. There shall be no order as to cost.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated: August 31, 2018

JPT

**(Justice S.V.S.Rathore)**  
**Member (J)**