

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 175 of 2016

Friday this the 25th day of November, 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)

Hon'ble Air Marshal Anil Chopra, Member (A)

No. JC-538603-H Ex Sub/Clk Keshav Datt Mishra
Son of Late Bala Datt Mishra
Resident of Vill – Nayal, PO – Kathpurchhina
Tehsil & District – Bageshwar U.K.
Presently residing at House No. 14 Shahinoor Colony, Nilmatha
Post – Nilmatha Via Dilkusha
District – Lucknow Cantt – 226002

..... **Applicant**

By Legal Practitioner - Shri Parijaat Belaura, Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Head Quarters Ministry of Defence, South Block, New Delhi.
3. The Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad (UP).
4. Officer in Charge, The Kumaon Regiment, PIN No-990473, C/O 56 APO.

..... **Respondents**

By Legal Practitioner - Dr. Shailendra Sharma Atal,
Learned Counsel for Central Govt.

ORDER (ORAL)

1. The instant application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has sought for rounding off of disability pension from 20% to 50% for life.

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 20.08.1977 as a Sepoy and he was discharged from service on 30.11.2006 (afternoon) as a Subedar on completion of 29 years 03 months and 12 days service. At the time of discharge his Release Medical Board was held on 12.07.2006 and he was diagnosed as suffering from '**GOUTY ARTHRITIS**' and was placed in low medical category P2 (Permanent). His disability was assessed as not attributable to military service but aggravated by military service and was assessed as 20% for life. The applicant is getting disability pension @ 20% for life. The applicant approached the respondents for benefit of rounding off of disability pension as per policy letter dated 31.01.2001 from 20% to 50% which has not been granted to him. Aggrieved, the applicant has filed this Original Application.

3. Heard Shri Parijaat Belaura, learned Counsel for the applicant, Dr. Shailendra Sharma Atal, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that the applicant is in receipt of disability pension @ 20% for life. However, as per Govt. of India, Ministry of Defence, New Delhi letter

No.1(2)/97/1/D(Pen-C) dated 31.01.2001, the applicant is entitled for rounding off of the disability pension but it has not been granted to him. Learned Counsel for the applicant also submitted that in catena of judgments, various Benches of Armed Forces Tribunals have given the benefit of rounding off to the personnel who have retired after completion of their terms of engagement in low medical category and The Hon'ble Apex Court has nodded in agreement of such relief.

5. Learned Counsel for the respondents concede that as per The Hon'ble Apex Court judgment, the applicant is entitled for rounding off of disability pension from 20% to 50%.

6. Having heard both the Counsels and perused the documents on record, we feel to recall the judgment of The Hon'ble Apex Court in the case of **K.J.S. Buttar vs. Union of India and others reported in SCC 2011, XI, 429** wherein The Hon'ble Apex Court has observed that a person who was discharged on completion of terms of service with a disability, was held to be 'invalided out' and was held entitled to the benefit of 'broad banding'. The Hon'ble Apex Court in Paras 17 & 18 of the judgment of **K.J.S. Buttar** (supra) has observed as under :-

"17. The respondents submitted that the appellant was not entitled to the above benefits as he had retired on completion of his Short Service Commission of 10 years and had not been invalided out of service.

18. In this connection it may be mentioned that the appellant was invalided out and released in a low medical category with permanent disability assessed at 50% by the Release Medical Board. As per the Defence Services Regulations/Pension Regulations for the Army 1961 where any officer is found suffering from disability attributable to or aggravated by Military Service he shall be deemed to have been invalided

out of service. Relevant provision (page 25 additional documents) read as under :-

53. Officers Compulsorily Retired on Account of Age or on Completion of Tenure.

(1) An officer retired on completion of tenure 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% or more, and service element, if the degree of disability is less than 20%. The retiring pension/retiring 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.

In our opinion the appellant is entitled to the benefit of the above Regulation.”

7. It is also observed that The Hon'ble Apex Court in **Review Petition (C) No. 2688 of 2013 in Civil Appeal No. 5591/2006, U.O.I. & ANR vs K.J.S. Buttar** has dismissed the Review Petition both on ground of delay as well as on merits on 21.01.2014.

8. We also find that the Union of India had taken in challenge the various orders of Tribunal whereby the benefit of rounding off of disability pension was granted to those personnel who had retired on completion of tenure of engagement. These appeals were dismissed. We feel to recall the judgment and order of The Hon'ble Apex Court of **Union of India and Ors. vs. Ram Avtar & ors (Civil Appeal No. 418 of 2012 dated 10th December 2014)** in which The Hon'ble Apex Court nodded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension

to the personnel who have retired on attaining the age of superannuation or completion of tenure of engagement, if found to be suffering from some disability. The relevant portion of the decision being relevant is excerpted below:

“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.

8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us.”

9. On the issue of delay and laches in filing the Original Application, we recall the case of **Shiv Dass Vs. Union of India reported in 2007 (3) SLR page 445 (Supra)** in Para 9 of the judgment, The Hon'ble Apex Court has observed:

“In the case of the pension the cause of action actually continues from month to month. That however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits, it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

10. In view of the directions given by The Hon'ble Apex Court in the cases of **K.J.S. Buttar** (supra) and **Ram Avtar** (supra), we are of the considered view that in conformity with the Rules, Regulations and the dictum of law laid down by The Hon'ble Apex Court, the applicant is entitled to the benefit of rounding off of disability pension to 50%.

11. The **Original Application No. 175 of 2016** succeeds and is allowed. The impugned order dated 30.06.2015 is set aside. The applicant is entitled for benefit of rounding off and shall be paid disability pension by extending the benefit of rounding off @ 50% for life from three years prior to filing i.e. 25.02.2013. The enhanced disability pension alongwith the arrears is directed to be disbursed to the applicant from the due date within four months from the date certified copy of this order is served upon the respondents. In case the respondents fail to pay the amount to the applicant within four months, they will have to pay interest @ 9% from due date till the date of actual payment.

12. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated : November, 2016
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