

RESERVED
Court No 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 587 of 2018

Thursday, this the 28th day of February, 2019

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”

NTR-16393L Lt Col Rameshwar Dayal (Retd) son of Late Raghuveer Singh, Pushpa Apartment FF-03 110-B Mall Avenue, Lucknow-226001 (UP).

.....Applicant

Ld. Counsel for: **Shri Manoj Kumar Awasthi,**
Advocate.
the Applicant

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Integrated HQ of MoD (Army), AG’s Branch, Medical Personnel Record Section (O), Dte Gen of Medical Services (Army), ‘L’ Block, New Delhi-110011.
3. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the: **Dr. S.N. Pandey,**
Respondents. Central Govt Counsel.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby he has sought following reliefs:-

- (a) *Issue/pass an order/direction to the respondents of appropriate nature to grant the benefits of ‘rounding-off’ of the disability pension from 20% to 50% with effect from 01.06.2000 to 31.12.2015 with arrears as a matter of right as provided vide Government of India, Ministry of Defence letter No 1(2)/97/D (Pen-C) dated 31.01.2001 (Annexure No A-4) supported by the law position held by the Supreme Court.*
- (b) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (c) *Allow this application with costs.*

2. Brief facts of the case are that the applicant was commissioned in the Army Medical Corps (AMC) in medical category SHAPE-I on 06.06.1976 and promoted to the rank of Lieutenant Colonel (Lt Col). The applicant superannuated on 31.05.2000 in low medical category. The applicant is entitled to disability element and is in receipt of the benefit of rounding off and related arrears of his disability pension @ 50% w.e.f. 01.01.2016 till date (**Annexure A-7 to the O.A.**). The primary claim of the applicant is that he should also be given the benefits of rounding off and the related arrears w.e.f. 01.06.2000 i.e. w.e.f. the date of his discharge till 31.12.2015. Hence this O.A.

3. Ld. Counsel for the applicant pleaded that the applicant is entitled to receive arrears of rounded off of disability pension for the period 01.06.2000 to 31.12.2015 in terms of Govt of India, MoD (Army) letter dated 31.01.2001 but despite sending representation dated 15.01.2018, respondent No. 3 has not implemented the aforesaid order. The Ld. Counsel for the applicant admitted that though the applicant has been granted arrears of rounded off of disability pension w.e.f. 01.01.2016 but in view of the Hon'ble Apex Court's judgment in the cases of **KJS Buttar vs UOI & Ors** in Civil Appeal No 5591 of 2006 and **UOI & Ors vs Ram Avtar** in Civil Appeal No 418 of 2012 the applicant is entitled to be granted rounding off of disability pension w.e.f. 01.06.2000 i.e. date of discharge.

4. On the other hand, Ld. Counsel for the respondents has submitted that in view of Govt policy to grant the benefit of rounding off w.e.f. 01.01.2016, for cases of superannuation or normal retirement, the applicant has been extended the same benefit w.e.f. 01.01.2016. Additionally, he contended that in view of pronouncement of various judgments of the Armed Forces Tribunals the applicant is entitled to grant of rounding off of disability pension w.e.f. three years prior to filing of the present O.A. The Ld. Counsel for the respondents further

submitted that since the applicant is claiming the benefit of rounding off of his disability pension w.e.f. the date of discharge i.e. 31.05.2000, his O.A. is not maintainable and concluded that the same be dismissed.

5. Heard Ld. Counsel for the parties and perused the material placed on record.

6. We have given our anxious consideration to the pleadings of both the Ld. Counsels as also perused PPOs placed on record. It is not disputed that the applicant had retired from service w.e.f. 31.05.2000 in low medical category for which he has been granted disability element @ 20%. It is also not disputed that the applicant has received arrears related to the benefit of rounding off of disability element @ 50% for the period 01.01.2016 till date.

7. The only point which needs to be considered is, as to whether the applicant can be granted disability element with the benefit of rounding off @ 50% w.e.f. the date of applicant's discharge i.e. 01.06.2000. In this context subsequent to implementation of recommendation of 7th CPC, policy for grant of benefit of broad banding of disability element stands revised vide MoD letter dated 04.09.2017 and 05.09.2017. Relevant extract of para 5.3 of policy dated 05.09.2017 is appended below:-

“5.3. Where an Armed Forces Personnel was discharged/retired under the circumstances mentioned in para 4.1 of this Ministry’s letter No 1(2)/97/D (Pen-C) dated 31.01.2001 with disability including cases covered under this Ministry’s letter No 16 (5)/2008/D (Pen/Policy) dated 29.09.2009 and 19.05.2017 and the disability/war injury had already been accepted as 20% or more, the extent of disability or functional incapacity shall now be determined in manner prescribed in para 7.2 of said letter dated 31.01.2001 for the purpose of computing disability/war injury element with effect from 01.01.2016. Rates for calculation of disability where composite assessment is made due to existence of disability, as well as injury, shall be determined in terms of provision contained in para 3 (b) of Ministry’s letter No 16 (2)/2015-D (Pen/Pol) dated 08 Aug 2016.

8. Thus, in accordance with the aforesaid Govt letter the respondents have granted the benefit of rounding off of disability element w.e.f. 01.01.2016 onwards to the applicant.

9. In this case we would also like to refer to the Hon’ble Apex Court judgment in the case of **Shiv Dass Vs Union of India & Ors** reported in 2007 (3) SLR 445 and according to the above judgment there is a requirement to restrict the period of arrears to three years. As such, in view of the decision of Hon’ble Supreme Court in the case of **Shiv Dass** (supra), we are of the considered opinion that the benefit of rounding off of disability pension should be granted to the applicant three years prior to filing of the present O.A. The O.A. was filed on 25.04.2018. Since the applicant has already received the benefit of rounding off of disability element for the period 01.01.2016 till date, he is entitled to receive the arrears

for rounding off of disability element for the period from 25.04.2015 to 31.12.2015.

12. In view of the above, the O.A. is partially **allowed**. The respondents are directed to give effect to release the arrears of the disability element @ 50% w.e.f. 25.04.2015 to 31.12.2015. The respondents are required to implement this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum till actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: February 2019
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