

RESERVED
Court No. 1

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

ORIGINAL APPLICATION No. 679 of 2017

Thursday, this the 28th day of February, 2019

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

1. Surendra Singh (No. JC-237518P Ex Sub), S/O Sri Gaya Singh, R/O Ambedkar Colony, Bholepur, Post-Fatehgarh, District-Farrukhabad (U.P.)-209601.
2. Birpal Singh (No. 220181 Ex Sub), S/O Sri Prati Pal Singh, R/O Ambedkar Colony, Bholepur, Post-Fatehgarh, District-Farrukhabad (U.P.)-209601.

..... Applicants

Ld. Counsel for the : **Shri Ashok Kumar**, Advocate.
Applicants

Versus

1. Union of Indiathrough Secretary, Ministry of Defence, D.H.Q., Post Office-New Delhi.
2. The Officer Incharge, Armoured Corps Records, PIN-900476, C/O 56 APO.
3. The Officer Incharge Rajput Regiment Record Office, PIN-900427, C/O 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri R.K.S. Chauhan**,
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

1. The instant Original Applications have been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

- (i) *This Hon’ble Court may graciously be pleased to direct the respondent No 2,3 & 4 to rounding up the disability pension of applicants from 20% to 50% and ensure/release the arrear of disability pension/element accordingly w.e.f. 1-10-2005 (Applicant No. 1) and w.e.f. 1-6-2002 (Applicant No. 2) as per the rules of the department along with interest @ 9% per annum and continue the same for life in pursuance of Circular dated 31.1.2001, in the interest of justice.*
- (ii) *This Hon’ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case.*
- (iii) *Award costs to the applicants.*

2. Briefly stated facts of the cases are that:-

(a) the applicant No 1 was enrolled in the Army on 30.09.1977 and was discharged from service w.e.f. 30.09.2005 after completion of terms of engagement under Rule 13 (3) III (i) of Army Rules, 1954. Prior to discharge from service, Release Medical Board (RMB) of the applicant was conducted on 21.04.2005 at Military Hospital (MH), Jodhpur and his disability “ANTERO SETAL MI I 21.0” was assessed @ 30% for life aggravated to military service. PCDA (P), Allahabad has however reduced the percentage of

disability from 30% to 20%. The applicant is in receipt of 20% disability pension for life vide PPO No DE/010131/2006 dated 08.03.2006 and he has prayed for rounding off of disability pension from 20% to 50% for life in terms of Govt of India, MoD letter dated 31.01.2001.

(b) the applicant No 2 was enrolled in the Army on 17.05.1974 and was discharged from service w.e.f. 31.05.2002 after completion of terms of engagement under Rule 13 (3) III (i) of Army Rules, 1954. Prior to discharge from service, applicant's disability was assessed as 20% for life and he is in receipt of disability pension @ 20% w.e.f. 01.06.2002 vide PPO No DE/932/2007. The applicant has prayed for rounding off of disability pension from 20% to 50% for life in terms of Govt of India, MoD letter dated 31.01.2001.

3. Ld. Counsel for the applicants pleaded that in accordance with the prevailing Rules on the subject, the applicants are entitled to rounding off of disability pension. He also submitted that various Benches of Armed Forces Tribunals have granted rounding off of disability pension

and therefore the applicants are entitled to grant of rounding off of disability pension.

4. On the other hand, Ld. Counsel for the respondents though have admitted that the applicants are in receipt of 20% disability pension for life but contended that they are not entitled to the benefits of rounding off of disability pension on the ground that since the applicants were discharged from service on completion of terms of engagement and the policy of rounding off of disability pension is applicable only to the persons who have been invalided out of service before completion of terms of engagement.

5. We have considered the submissions of the Ld. Counsel for the parties and perused the material placed on record.

6. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of Hon'ble Apex Court in the case of ***Union of India vs Ram Avtar & Ors***, Civil Appeal No 418 of 2012 decided on 20 December, 2014. Thus we hold that both the applicants are eligible for rounding off of their disability element from 20% for life to 50% for life.

7. In view of the above, the O.A. deserves to be allowed, hence **allowed**. The respondents are directed to release the disability element to both applicants @ 20% for life rounded off to 50% for life within a period of four months from the date of receipt of a certified copy of this order. However the arrears of disability element is restricted to three years prior to filing of the O.A. in view of decision of the Hon'ble Apex Court in the case of ***Shiv Das v Union of India and Ors*** reported in (2008) 2 PLR 573. This O.A. was filed on 08.05.2017. In case this order is not complied with within the stipulated period, the amount so accrued shall carry interest @ 9% per annum from the due date, till actual payment thereof.

No order as to costs.

(Air Marshal B.B.P. Sinha) (Justice S.V.S. Rathore)
Member (A) Member (J)

Dated: February, 2019

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