

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Review Application No. 3 of 2023 Inre O.A. No. 530 of 2022**Thursday, this the 16th day of February, 2023**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)No. 14675580P Ex Cfn Inst. Mech. Surya Bhan Giri
S/o Shri Ram Kishoon Giri
R/o B-284, Sainik Vihar, Nanda Nagar, PO – Kunraghat,
District – Gorakhpur (UP) – 273008

..... Applicant

Ld. Counsel for the Applicant: **Shri Vijay Kumar Pandey**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, RK Puram, New Delhi-110011.
2. Dir PS-4, Adjutant General's Branch, IHQ of MoD (Army), New Delhi – 110011.
3. OIC Record, Records EME, Secunderabad – 500021.
4. PCDA (P), Draupadi Ghat, Allahabad (UP) – 211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Shyam Singh**,
Central Govt Counsel**ORDER**

1. Heard Shri V.K.Pandey, learned counsel for the applicant and Shri Shyam Singh, learned counsel for the respondents.
2. This application has been filed under section 14(f) of the Armed Forces Tribunal Act, 2007 to review the order dated 16.12.2022 in O.A. No. 530 of 2022 by which while allowing the O.A. for the grant of the benefits of rounding off of the disability element w.e.f. 1st January 1996 the arrears have been restricted to three years prior to filing of the O.A.

3. Learned counsel for the applicant submitted order restricting arrears of the benefits of the rounding off to three years prior to filing of the O.A. is an error in law in view of law laid down by the larger Bench of the Tribunal (P.B.) in the case of **Ex Sgt Girish Kumar & Others Vs Union of India & Others** (O.A. Nos. 1439 to 1441 & 1448,1452 & 1463 of 2016), decided on 1st December 2017. The larger Bench of the Tribunal in this case has held that pre 1996 retirees are also entitled to the benefit of the rounding off of the disability element contained in Gol, MoD letter No.1(2)/1997/I/D (Pen-C) dated 31.01.2001. It has further held that in case of pre 1996 retirees the benefit will be extended from 1st January 1996 and not from the date of discharge as policy granting benefits of the rounding off is applicable w.e.f. from 01.01.2006. It has further held that arrears will not be restricted to three years preceding the filing of O.A. if the individual is in receipt of disability element under the order of IMB/RMB, it will be restricted in those cases only where individual is in receipt of the disability element under order of court.

4. He submitted that since in case in hand applicant is in receipt of disability element @ 30% under the order of IMB and he is a pre 2006 retiree therefore, he is entitled to the benefits of the rounding off from 01.01.1996 and arrears can't be restricted to three years preceding the filing of the O.A. But as arrears have been restricted to three years preceding the filing of the O.A. against the law laid down in law, it is an error in law and needs to be reviewed.

5. Per contra, learned counsel for the respondents submitted that against order dated 1st December 2017 of the larger Bench of the Tribunal (P.B.) in Ex Sgt Girish Kumar case the Union of India has filed Civil Appeal Diary No (s) 21811 of 2018 wherein the Hon'ble Apex Court has stayed the operation of the order vide its order dated 13.07.2018 and the order is still in force. Thus he submitted that since the order passed by the larger Bench of the Tribunal is stayed by the Hon'ble Apex Court until further order, the order passed by this

Tribunal in O.A. No. 530 of 2022 is not liable to be reviewed in view of the order referred to above herein, application deserves to be dismissed.

6. The undisputed facts before us is that while allowing the original application for the grant of the benefits of the rounding off of the disability element to the applicant w.e.f. 1st January 1996 being a pre 1996 retiree and in receipt of the disability element @ 30% under the order of the IMB/RMB the arrears were restricted to three years preceding the filing of the application as held by the Hon'ble Apex Case in the case of **Shiv Dass Vs Union of India & Others**, 2007 (3) SLR 445. With regard to restrictions of three years review of the order has been sought on the basis of the judgement dated 1st December 2017 of larger Bench of the Tribunal (P.B.) referred to above herein wherein it has been held that if individual is in receipt of disability element prior to 1996 under the order of the IMB/RMB the benefits of the rounding off will be extendable w.e.f. 1st January 1996 and arrears of the benefits will not be restricted to three years. However, Union of India & Others have preferred a Civil Appeal Diary No.(s) 21811 of 2018 against the decision of the larger Bench wherein the Hon'ble Apex Court has stayed the operation of the order until further order vide order dated 13.07.2018. Thus the order on which basis review has been sought is not in force. Therefore, order cannot be reviewed, application deserves to be dismissed.

7. Accordingly, Review Application is **dismissed**. However, it is made clear that in case of order passed by the larger Bench being maintained in Civil Appeal this order will not come in way in seeking the appropriate remedy, as the case may be.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated : 16th February, 2023

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(Justice Umesh Chandra Srivastava)
Member (J)