

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 228 of 2013

Wednesday this the 30th day of September, 2015

Hon'ble Mr. Justice V.K. DIXIT, Member (J)

Hon'ble Lt Gen Gyan Bhushan, Member (A)

IC-35975A Col. Deepak Kumar Tripathi, aged about 55 years
son of Sri K.N. Tripathi, resident of Flat No. 402 Dashmesh
Apartments, 16/6 Sarojini Naidu Marg, Lucknow-226001.

..... Applicant

By Legal Practitioner Maj. (Retd.) R.D. Singh, Advocate

Versus

1. Union of India, through its Secretary,
Ministry of Defence,
New Delhi.
2. The Chief of Army Staff,
Army HQ, New Delhi.
3. Adjutant General, Army HQ, New Delhi.
4. PCDA (P), Allahabad.

..... Respondents

By Legal Practitioner Mrs. Deepti Prasad Bajpai, Learned
Counsel for the Central Government

ORDER

“Hon’ble Lt Gen Gyan Bhushan, 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, and he has claimed the reliefs as under:-

- “(i) To direct Respondents to grant 50% disability pension to the applicant by rounding off from 20% disability to 50% as per the provisions of Ministry of Defence letter dated 31.01.2001 (Annexure No. A-4 and A-5).*
- (ii) To grant arrears of pension as admissible w.e.f. the date of enhanced disability pension entitle to the applicant with interest.*
- (iii) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (iv) Cost of the application be awarded to the applicant.”*

2. The present application has been preferred for relief of rounding off of disability pension already granted to the applicant. The admitted and undisputed facts are that the applicant was commissioned in the Indian Army on 09.06.1979 and retired from service on attaining the age of superannuation on 30.11.2012 in low medical category. The applicant is in receipt of 20% disability pension for life which has been confirmed by the respondents also.

3. Heard Maj. (Retd.) R.D. Singh, Learned Counsel for the applicant, Mrs. Deepti Prasad Bajpai, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that as per Govt of India, Ministry of Defence, New Delhi letter No.1(2)/97/1/D(Pen-C) dated 31.01.2001, Army Officers were granted benefit of rounding off of disability pension from 20% to 50% which was not done in the case of applicant by PCDA (P) Allahabad. Since the applicant was not granted 50% disability pension by rounding off, he requested Additional Directorate General Army Headquarters New Delhi vide letter No. 35975/Pers dated 20 January, 2013 to do the needful and advise CDA (P) Allahabad to round off his disability pension to 50% but he has not been given the benefit of rounding off, as yet. Learned Counsel further submitted that in catena of judgments, Armed Forces Tribunals has given the benefit of rounding off to officers who had superannuated in low medical category and were in receipt of disability pension and Hon'ble The Apex Court has nodded in agreement of such relief as such the benefit of rounding off be provided to the applicant, also.

5. Per contra, the Learned Counsel for the respondents has submitted that the applicant is not entitled for rounding off of disability pension in terms of Govt of India letter dated 31.01.2001. The rounding off benefit is applicable to personnel who are invalided out of service. Personnel who retire on attaining the age of retirement are not eligible to the benefit of the rounding off of disability pension. Since the applicant has

superannuated on attaining the age of retirement, he is not entitled to the rounding off of disability pension.

6. The main issue for consideration in the instant case is whether the applicant would be entitled to benefits of rounding off of the disability pension since he has retired on attaining the age of superannuation. It is not disputed that at the time of retirement, the applicant was in low medical category and is in receipt of disability pension @ 20% for life. In connection with the submission, we feel called to Para 53 of Pension Regulations for the Army 1961 (Part-1). It being relevant, is quoted below :-

Para 53 of Pension Regulations for the Army 1961 (Part-I)

“53. (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 a disease on the date of first removal from duty on account of that disease.”

7. Hon’ble The Apex Court in the case of **K.J.S. Buttar vs Union of India and others reported in SCC 2011, XI, 429** has

observed that a person who was discharged by retirement 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'. Hon'ble The 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."

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

9. **In Union of India and Ors vs Ram Avtar & ors (Civil Appeal No 418 of 2012 dated 10th December 2014)** in which Hon'ble The 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 been invalided out of service on account of being in low medical category or who has retired on attaining the age of superannuation or completion of his 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."

10. It would appear that in the aforesaid case, 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 superannuation or on completion of tenure of engagement. The bunch of appeals culminated in being dismissed and the judgments of the High Court and Armed Forces Tribunal Benches were noded in approval attended with direction that the dismissal of those appeals will be taken note of by the High Courts as well as by the Armed Forces Tribunal Benches in granting appropriate relief to the pensioners before them. When the peremptory direction of the Apex Court is applied to the present case, it would lead us to the conclusion that the applicant, who has retired on attaining the age of superannuation, would also be entitled to the benefit of rounding off.

11. In view of the directions given by Hon'ble The Apex Court in the cases of **K.J.S. Buttar vs. Union of India & others (supra)** and the **Union of India & others vs. Ram Avtar (supra)**, we are of the considered view that in conformity with the Rules, Regulations and the dictum of law laid down by

Hon'ble The Apex Court, the applicant is entitled to the benefit of rounding off of disability pension to 50%.

ORDER

12. In the result, the Original Application succeeds and is allowed. The applicant is entitled for the benefit of rounding off and shall be paid the disability pension by extending the benefit of rounding off @ 50% for life. The enhanced disability pension alongwith the arrears is directed to be disbursed to the applicant from the due date within three months from the date certified copy of this order is served upon the respondents.

13. There will be no orders as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice V.K. DIXIT)
Member (J)

Dated : September , 2015
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