

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 192 of 2015

Friday this the 15th day of July, 2016

Hon'ble Mr. Justice Abdul Mateen, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Rahmat Ullah Sheikh aged about 51 years son of late Mohd. Abel Hossain, Ex. No. 1079090, Armoured Corps, residing at House no. 773 Humayunpur North, Post Office Gorakhnath Temple, District Gorakhpur, U.P.

..... **Applicant**

By Legal Practitioner Wg Cdr A.K. Singh (Retd), Advocate

Versus

1. Union of India through the Secretary,
Ministry of Defence, Government of India, New Delhi.
2. Chief of Army Staff, Integrated HQs, MoD (Army), South Block, New Delhi.
3. Principal, Chief Controller of Defense Account (Pension) Allahabad.
4. The Officer-in-Charge, Kavachit Corps, Abhilekh, Armoured Corps Records, Ahmad Nagar.
5. Director Gen. Mech. (Pers), General Staff Branch, Integrated HQs of MoD (Army), DHQ, P.O. New Delhi-110011.

..... **Respondents**

By Legal Practitioner Shri Asheesh Agnihotri, Learned Counsel
for the Central Government

JUDGMENT

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:-

- “(a) Issuing/passing of an order or direction to the Respondents to set aside/quash the arbitrary and illegal order of Dte. Gen. Mech. Forces (Pers), vide letter No. B/6013/R-120/GS/MF (Pers) dated 28 Jan. 2015 (Annexure A-1).*
- (b) Issuing/passing of an order or direction to the Respondents to issue corrigendum PPO authorizing disability element @ 50% for life, in accordance with para 7.2 of GOI, MOD letter No. 1(2)/97/1/D (Pen-c) dated 31 Jan. 2001, from the date of discharge i.e. 01.01.2000.*
- (c) Issuing/passing of an order or direction to the Respondents to pay interest @ 12% on the arrears as granted by Principal Bench in a similar case.*
- (d) Pass such other or further order (s) as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of this case.*
- (e) Allow the application with cost.”*

2. The applicant is in receipt of disability pension @ 20% for life and in support of this he has filed a copy of PPO dated 04.04.2014. Learned counsel for the respondents have accepted the fact that the applicant is already in receipt of disability pension @ 20% from the date of discharge i.e. 01.01.2000 (forenoon). The applicant approached the respondents for the benefit of rounding off of the disability pension which has been

rejected vide letter dated 28.01.2015. Aggrieved, the applicant has filed this Original Application.

3. Heard Wg Cdr A.K. Singh (Retd), learned counsel for the applicant, Shri Asheesh Agnihotri, learned counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that the applicant is in receipt of 20% disability pension for life as per PPO dated 04.04.2014. 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 and that it has been rejected vide order dated 28.01.2015. Learned Counsel for the applicant submitted that in catena of judgments, various Benches of Armed Forces Tribunal have given the benefit of rounding off to the personnel who are in low medical category and are in receipt of disability pension and Hon'ble the Apex Court has nodded in agreement of such relief.

5. **Per contra**, the learned counsel for the respondents has submitted that as per Government of India, Ministry of Defense letter dated 31.01.2001, the applicant is not entitled for the benefit of rounding off of the disability pension.

6. Having heard both the counsels and perused the document 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 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.”

7. It is also observed that the Hon'ble 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** 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 Hon'ble Apex Court in the case of **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 disapproved 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. 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 **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%.

10. Resultantly, the Original Application **No. 192 of 2015** succeeds and is allowed. Order dated 28.01.2015 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. 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 a 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.

11. There will be no order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice Abdul Mateen)
Member (J)

Dated : July, 2016
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