

Court No. 1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 11 of 2018

Thursday, this the 15th day of March, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

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

IC-33305A Col Kul Bhushan Ulfa Kaul (Retd), s/o Late Sri B.N.
Ulfa R/O 530/8, Bada Chand Ganj, Near Kapoorthala, Aliganj,
Lucknow

..... **Applicant**

By Legal Practitioner – Shri Anand Yadav, Advocate

Versus

1. Union of India, through the Secretary Ministry of Defence,
New Delhi
2. Chief of the Army Staff, Integrated Headquarters of Ministry
of Defence (Army) South Block, New Delhi-110011
3. DADS, Pension Allahabad
4. The Chief Manager, CPPC, SBI, Main Branch, Kachehari
Road, Allahabad

..... **Respondents**

By Legal Practitioner – Shri Anurag Mishra
Learned Counsel for the Central Govt.

ORDER

“Hon’ble Mr. Justice S.V.S Rathore, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought relief for rounding off of disability pension from 60% to 75% for life.
2. The applicant is in receipt of disability pension and he has filed this Original Application No. 11 of 2018 for the relief of rounding off of the disability pension. Undisputed facts of the case, agreed by both learned counsel for the parties, is that the applicant was enrolled in the Army on 03.12.1972 and was discharged from service on 30.06.2006 (afternoon) in low medical category. The applicant is in receipt of 60% disability pension for life. The applicant approached the respondents for benefit of rounding off of disability pension vide representation dated 01.05.2017 which has not been decided by the respondents as yet. Aggrieved, the applicant has filed this Original Application. The delay in filing of Original Application has been condoned vide order dated 19.12.2017.
3. Heard Shri Anand Yadav, Advocate holding brief of Shri SG Singh, learned counsel for the applicant, Shri Anurag Mishra, learned counsel for the respondents and perused the record.
4. Learned counsel for the applicant submitted that the applicant is in receipt of 60% disability pension for life as per Corrigendum

PPO No. M/Dis/Corr/006112/2009. 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 benefit of rounding off of the disability pension but it has not been granted to him. Learned counsel for the applicant submitted that in catena of judgments, various Benches of Armed Forces Tribunals have given the benefit of rounding off to the personnel who have retired after completion of their terms of engagement in low medical category and Hon'ble The Apex Court has nodded in agreement of such relief.

5. Despite repeated opportunities, no counter affidavit has been filed by learned counsel for the respondents which is indicative from order sheet dated 16.01.2018 and 26.02.2018. However, in the absence of counter affidavit, PPO itself is indicative of receipt of 60% disability pension. Learned counsel for the respondents conceded that keeping in view various judgments of the Armed Forces Tribunals, the applicant is entitled to the benefit of rounding off subject to verification of the fact that the applicant is in receipt of 60% disability pension.

6. The law on rounding off of disability pension is well settled by the Hon'ble Supreme Court. Thus 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** reported in SCC 2011, XI, 429 and **Union of India & others vs. Ram Avtar & ors** (Civil Appeal No. 418 of 2012 dated 10th December 2014), 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 his disability to 75% from the existing 60%. However, since respondents have not filed a counter affidavit despite repeated extension, they shall be at liberty to verify the facts.

7. So far as entitlement of the applicant to receive arrears of disability pension is concerned, the larger Bench of Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 1439 of 2016, *Ex Sgt Girish Kumar vs. Union of India & Ors* relying upon the decision of Hon'ble Apex Court in the case of *Davinder Singh vs. Union of India & Ors* (C.A. No. 9946 of 2016) decided on 20.09.2016 has held that the benefit of broad banding of disability/war injury element of pension will be with effect from 01.01.1996. The relevant portion of the Full Bench decision in the case of *Ex Sgt Girish Kumar* (supra) is reproduced as under :-

“55. After having fully discussed the issue involved before us and to set the controversy at rest vis-à-vis arrears of broad banding of the disability/war injury element of disability pension on the ground of delay in filing application(s) by the individual/applicant(s), we conclude grant of arrears of broad banding of disability pension, stands answered in the fact that all applicants will be entitled to broad banding of disability/war injury element of pension with effect from 01.01.1996, irrespective of whether they retired pre-1996 or post-1996 without any restriction of arrears of three years.”

8. The **Original Application No. 11 of 2018** succeeds and is allowed. The applicant is entitled for benefit of rounding off and shall be paid enhanced disability pension by rounding off from 60% to 75% for life subject to verification of the fact that the applicant is

in receipt of 60% disability pension from the date of discharge i.e, 01.07.2006. The respondents are directed to pay the enhanced disability pension alongwith the arrears within four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

9. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

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

Dated : March, 2018

DDS