

Court No. 1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 221 of 2017

Tuesday, this the 23rd day of January, 2018

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

Hon'ble Air Marshal BBP Sinha, Member (A)

Lt. Col. Om Prakash Singh
Son of Late Shambhu Nath Singh
Resident of village – Bahalolpur,
Post – Nehula
Police Station – Mehanazpur
District – Azamgarh

..... **Applicant**

By Legal Practitioner - Shri Parijaat Belaura, Advocate

Versus

1. Union of India, through the Secretary,
Department of Defence,
New Delhi.
2. The Chief of Army,
IHQ of MoD, Sena Bhawan,
New Delhi.
3. AG's Branch/MP-6 (B),
IHQ of MoD (Army),
West Block-III, R.K. Puram,
New Delhi.
4. The PCDA (P), Draupadi Ghat,
Allahabad.

..... **Respondents**

By Legal Practitioner – Dr. Shailendra Sharma Atal
Learned Counsel for the Central Govt.

ORDER

“Hon’ble Air Marshal BBP Sinha, 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, whereby the applicant has sought the relief for rounding off of disability pension from 40% to 50%.

2. The applicant is in receipt of disability pension and he has filed this Original Application No. 221 of 2017 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 recruited in the Army on 28.03.1977 and selected for the commissioned rank in January, 1986 in Army and commissioned on 15.12.1989 as 2nd Lt. The applicant superannuated from service on 31.01.2014 (afternoon) in low medical category. The applicant is in receipt of 40% disability pension for life. The applicant approached the respondents for benefit of rounding off of disability pension which has not been granted to him. Aggrieved, the applicant has filed this Original Application. The delay in filing of Original Application has been condoned vide order dated 29.06.2017.

3. Heard Shri Parijaat Belaura, learned counsel for the applicant, Dr. Shailendra Sharma Atal, learned counsel for the respondents and perused the record.

4. Learned counsel for the applicant submitted that the applicant is in receipt of 40% disability pension for life as per Corrigendum PPO No. M/CORR/8185/2014 dated 09.12.2014. 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. 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 24.07.2017, 04.10.2017, 14.11.2017, 06.12.2017, 02.01.2018 & 12.01.2018. However, in the absence of counter affidavit, PPO itself is indicative of receipt of 40% disability pension. Subsequently, 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.

6. We feel to recall the judgment of 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** wherein Hon'ble The Apex Court 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."

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. On the issue of rounding off of the disability pension, we also recall the judgment and order of Hon'ble The Apex Court 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 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 retired on attaining the age of superannuation or completion of their tenure of engagement, if found to be suffering from some disability.

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. 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.”

11. The **Original Application No. 221 of 2017** succeeds and is allowed. The applicant is entitled for benefit of rounding off and shall be paid enhanced disability pension by rounding off from 40% to 50% for life from the date of discharge. 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.

12. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated : January, 2018
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