

**RESERVED  
Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 477 of 2017**

**Thursday, this the 15<sup>th</sup> day of March, 2018**

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)  
“Hon’ble Lt Gen Gyan Bhushan, Member (A)”**

Wing Commander S.P. Rathore (24734) AE (L) (Retired), S/o Shri Ram Chandra Rathore, R/o HIG 5/249, Ambedkarpuram Avas Vikas-III Kalyanpur, Kanpur- 208017, State: Uttar Pradesh.

..... Applicant

Ld. Counsel for the: **Shri R. Chandra**, Advocate  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. The Chief of Air Staff Air Headquarters New Delhi-110011.
3. Directorate of Air Veterans Air Headquarters SMC Building, 1<sup>st</sup> Floor, Subroto Park New Delhi-110010.
4. Joint CDA (Air Force), Subroto Park New Delhi-110010.

.....Respondents

Ld. Counsel for the: **Shri Virendra Singh**,  
Respondents. Addl Central Govt. Standing Counsel assisted by  
**Wg Cdr Sardul Singh**, OIC Legal Cell.

**ORDER**

**Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)**

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for grant of disability pension and its rounding off.
2. We have heard learned counsel for the parties and perused the record.

3. The applicant was commissioned in the Indian Air Force on 22.11.1995 and superannuated from service on 31.03.2015, in low medical category A4 G2 (P) with composite degree of disablement at 11-14% (less than 20%) for life. However, Release Medical Board has recommended the said disability as aggravated by service but his claim was rejected vide order dated 25.08.2015. Applicant preferred first and second appeals to the respondents which were rejected vide orders dated 06.07.2016 and 04.09.2017. Being aggrieved the applicant has filed the present petition.

4. Learned counsel for the applicant submitted that at the grant of commission, the applicant was in a fit medical condition, as such, his disability should be considered as attributable to and aggravated by service and disability pension should be granted to the applicant in consonance with catena of judgments of Hon'ble Supreme Court and Benches of Armed Forces Tribunal.

5. Rebutting arguments of learned counsel for the applicant, learned counsel for the respondents submitted that the applicant was discharged from service on 31.03.2015, in low medical category A4 G2 (P) with composite degree of disablement at 11-14% (less than 20%) for life, on account of his suffering from Individual Disability (ID): Bilateral Sensori Neural Hearing Loss and as such, the applicant has rightly been denied disability pension but subsequently acceded that in similar cases, various benches of Armed Forces Tribunal have granted disability pension and the case of the applicant is squarely covered by those judgments, hence he is entitled to grant of disability pension.

6. We have considered the submissions of the learned counsel for the parties and perused the material placed on record.

7. The law on the point of grant of disability pension and its rounding off is no more res integra. In the case of ***Dharamvir Singh vs. Union of India & Ors***, (2013) 7 SCC 316, while considering the question with regard to payment of disability pension, their Lordships of Hon'ble Supreme Court held that an Army personnel shall be presumed to have been in sound physical and mental condition upon entering service except as to physical disabilities noted or recorded at the time of entrance and in

the event of his being discharged from service on medical grounds, any deterioration in his health, which may have taken place, shall be presumed due to service conditions. In ***Dharamvir Singh's*** (supra), their Lordships held that the onus of proof shall be on the respondents to prove that the disease from which the incumbent is suffering is not attributable to nor aggravated by military service. Similar view was expressed by their Lordships of the Hon'ble Supreme Court in the cases of ***Sukhvinder Singh vs. Union of India***,(2014) 14 SCC 364, ***Union of India & ors vs. Angad Singh Titaria***, (2015) 12 SCC 257 and ***Union of India vs. Rajbir Singh***, (2015) 12 SCC 264.

8. In the case in hand, since the Medical Board has assessed the disability as 11-14% (less than 20%) for life, the disability suffered by the applicant in view of the settled proposition of law is to be considered as attributable to military service.

9. On the issue of rounding off of disability pension, we are of the opinion that the instant case falls within the four corners of the decision in the case of ***K.J.S. Buttar vs Union of India and ors***, (2011)11 SCC 429 and Review Petition (C) NO. 2688 of 2013 in Civil Appeal No. 5591/2006, ***Union of India & anr vs. K.J.S.Butter*** and ***Union of India vs. Ram Avtar & ors*** (Civil Appeal No. 418 of 2012 decided on 10<sup>th</sup> December, 2014.

10. As to the period of entitlement of the applicant to receive arrears of disability pension, 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. Accordingly, O.A. No. 477 of 2017 is allowed. The impugned orders are set aside. The respondents are directed to grant disability pension to the applicant after rounding off @ 50% for life from the date of discharge i.e. 31.03.2015. The entire exercise shall be completed by the respondents within four months from the date of production of certified copy of this order failing which the applicant shall be entitled to simple interest @ 9% per annum on the amount accrued from due date till the date of actual payment.

No order as to cost.

**(Lt Gen Gyan Bhushan)**

**Member (A)**

Dated : March 15, 2018

**(Justice SVS Rathore)**

**Member (J)**