

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**O.A. No. 646 of 2017**Monday, this the 15th day of January 2018**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal BBP Sinha, Member (A)**JC-214181-L**, Ex Nb Sub Chandra Pati Yadav, S/o Late Daljit Ram, R/o Vill-Rewatha, Post-Baraura Tehsil-Azamgarh, Dist-(U.P.)

....Applicant

Ld. Counsel for the: **Shri Arvind Kumar Pandey**, Advocate
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of Army Staff Integrated Headquarters of Ministry of Defence (ARMY) DHQ (P.O.) New Delhi.
3. The Officer, In-Charge AOC, Records, Secunderabad.
4. The Chief Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad (U.P.).

.....Respondents

Ld. Counsel for the: **Dr. S.N. Pandey**, Central
Respondents. Sr. Central Govt Counsel assisted by
Maj Salen Xaxa, OIC, Legal Cell.

ORDER (ORAL)

1. Despite time granted, no counter affidavit has been filed by the respondents. Controversy relates to rounding off of disability pension from 20% to 50%. According to medical opinion on record, applicant was allowed disability pension to the extent of 20% from the date of discharge. Applicant has approach to this tribunal for rounding off of disability pension. Keeping in view the pleadings on record, we proceed to finally dispose of this petition since law on the subject is no more res-integra.

2. The present application has been preferred under Section 14 of the Armed Forces Tribunal Act, 2007 for rounding off of disability pension from 20% to 50% for life.

3. Heard Shri Arvind Kumar Pandey, Ld. Counsel for the applicant and Dr. S.N. Pandey, Ld. Counsel for the respondents, assisted by Maj Salen Xaxa, OIC Legal Cell and perused the records.

4. The applicant was recruited in the Indian Army on 23.09.1971 and was discharged from service on 01.10.1995 after rendering more than 24 years of service in low medical category under Army Rule 13 (3) iii (i). It is not disputed that the applicant is in receipt of 20% disability pension with service element for life. The PPO of the applicant confirms receipt of 20% disability pension.

5. The Ld. Counsel for the respondents and OIC Legal Cell admitted that the applicant is in receipt of 20% disability pension for life.

6. Ld. Counsel for the applicant submitted that the applicant was discharged in low medical category of 20% disability for life which is

required to be rounded off to 50% for life. The case is squarely covered by catena of judgments of Hon'ble Supreme Court on this matter.

7. Here we would like to quote operative portion of the judgment of the Hon'ble Supreme Court on rounding off of disability pension rendered in the case of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014:-

"4. By the present set of appeals the appellant raise the question, whether or not, an individual, has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to suffering from some disability which is attributable or aggravated by the military service, is entitled to grant the benefit of rounding-off of disability pension. The appellant(s) herein would contend that, 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 on 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 at length.

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."

In the light of the aforesaid judgment, the applicant's disability pension is rounded off to 50% for life from three preceding years from the date of filing of the present petition. The date of filing this petition is 09.11.2017.

8. We dispose of the present O.A. in terms of the above judgment with a direction to the respondents to release the disability pension @ 50% along with arrears within a period of four months from the date of receipt of a certified copy of this order. In case this order is not complied with within the stipulated period, the amount so accrued shall carry interest @ 9% per annum from the due date, till actual payment thereof.

9. . However, while taken a decision with regard to rounding off of disability pension respondent shall verify the genuineness of the material on record and only after satisfaction shall ensure payment of rounding off of disability pension from 20% to 50%.

O.A. is **allowed** accordingly.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice Devi Prasad Singh)
Member (J)

Dated: 15th January, 2018

JPT