

RESERVED
COURT NO.1

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

ORIGINAL APPLICATION No. 650 of 2017

Thursday, this the 08th day of March, 2018

"Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"

No. JC 479532-M Sub (Clk) Shiv Bir Singh Bhadauria (Retd),
S/o Shri Gurdayal Singh, R/O 63A/CV/10 Choudhary Vihar
COD Road Post: Partappura, Dist: Agra (UP)

.... Applicant

Ld. Counsel appeared - Shri Shailendra Kumar Singh,
for the applicant Advocate

Versus.

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block – III, New Delhi – 110011.
3. OIC Records, The Rajput Regiment, PIN: 900427, C/O 56 APO.
4. PCDA (Pension) Draupadi Ghat, Allahabad (UP) – 211014

..Respondents

Ld. Counsel appeared - Shri V.P.S Vats,
for the Respondents Advocate, Addl. Central Govt.
Standing Counsel

Assisted by - Maj Salen Xaxa, OIC Legal Cell

ORDER**"Per Hon'ble Air Marshal BBP Sinha, Member (A)"**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for rounding off of disability pension from 20% to 50%.
2. The facts draped in brevity, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Army on 28.03.1984 in medically fit condition and was discharged from service with effect from 30.06.2011 on completion of more than 27 years of service. The Release Medical Board held before discharge, assessed the disability as 20% for life and opined it to be attributable to military service. Thereafter, the Applicant was sanctioned disability pension at the rate of 20% for life.
3. The present O.A. has been preferred for the relief of rounding off of the disability pension in terms of the Govt policy dated 31.01.2001 and also regard being had to the various decisions of the Apex Court on the point.
4. We have heard learned counsel for the Applicant as also, Ld. Counsel for the respondents and perused the record. We have also perused the PPO (Annexure -3 to the O.A) vide which the applicant is in receipt of 20% disability pension.

5. In the instant case, no counter affidavit has been filed despite repeated extensions. During arguments, the learned counsel for the respondents have conceded that the applicant is in receipt of 20% disability pension. Additionally, we have come across a letter from the respondents (Annexure A-1 to the O.A) according to which the rounding off has been denied on the ground that it is not a case of invalidation. The question with regard to rounding off of disability pension has been settled by the Apex Court in a catena of decisions and the same is no more res - integra. Accordingly, no useful purpose would be served by keeping the matter lingering. Hence with the consent of the learned counsel for the parties, we proceed to decide the Application at this stage without the aid of counter affidavit.

6. Coming to the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decisions of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar*** and ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. In ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014, the Apex Court observed to the following effect:

"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 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. In view of the above the Original Application deserves to be allowed.

9. Accordingly the O.A. is **allowed**. The disability pension which was assessed as 20% for life shall stand rounded off to 50% for life from the date of discharge i.e. 30.06.2011 (subject to verification). The respondents are further directed to give effect to this order within a period of 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.

10. There shall be no order as to cost.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: March, 08 , 2018
MH/-