

RESERVED
COURT NO. 1

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

ORIGINAL APPLICATION No. 145 of 2018

Friday, this the 09th day of March, 2018

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

JC-195843L Sub (Hony Sub Maj) Sheel Kumar (Retd) Son of Late Shri Raghunath Sahay, 366 Geeta Vihar Colony, Madharmau Sultanpur Road, Lucknow 226002.

----- **Applicant**

**Ld. Counsel appeared - Col Y.R. Sharma (Retd),
for the applicant Advocate,**

Versus

1. Union of India, Through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MOD (Army) Army Headquarters, South Block, New Delhi-110011
3. Adjutant General ADG (PS) AG's Branch, IHQ of MoD (Army) Army Headquarters, New Delhi-110001.
4. Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad . PIN 211014
5. Officer in Charge Records
EME Records, Secunderabad - 500021.

-----**Respondents**

**Ld. Counsel appeared - Shri A.N.Tripathi,
for the Respondents Advocate, Addl. Central Govt.
Standing Counsel**

Assisted by - Maj Salen Xaxa, OIC Legal Cell

ORDER**"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 40% to 50%.

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Indian Army on 19.03.1969 in medically fit condition and was discharged from service with effect from 31.05.1999 on completion of more than 30 years of service. The Release Medical Board held before discharge assessed the disability as 40% for life and opined to be aggravated by military service. In ultimate analysis, the Applicant was sanctioned disability pension at the rate of 40% for life. The Reassessment Medical Board was also held on 01.09.2003 which again assessed the disability as 40% 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.

5. In the instant case, no counter affidavit has been filed despite extension of time frame. However the respondents have conceded that the applicant is in receipt of disability pension @ 40% since his discharge. Additionally we have perused Annexure A-I to the O.A. which is a letter by EME Records indicating details of disability in the R.S.M.B. (Re Survey Medical Board) held in September 2003. It is thus clear that the applicant is in receipt of disability pension @ 40% since his discharge. Since the issue of rounding off of disability pension is a settled proposition of law, being a recurring cause of action, delay in filing the Application is condoned. The question with regard to rounding off of disability pension has already 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 calling for counter affidavit.

6. The issue of rounding off of disability is linked to broad-banding. We find that the relief of broad-banding is entitled to all personnel who have retired on superannuation or on completion of term of engagement by Hon'ble Apex Court in its judgment of **UOI vs. Ram Avtar's and others** case. The relevant portion of this Judgment is as follows:-

"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 40% for life shall stand rounded off to 50% for life from the date of discharge i.e. 31.05.1999 (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. No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

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

Dated : March, 09 , 2018

MH/-