

Court No. 1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 155 of 2018

Friday, this the 9th day of March, 2018

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

Hon'ble Lt Gen Gyan Bhushan, Member (A)

No 6882836N Ex Hav Jawahar Singh, S/O Late Sri Zile Singh, R/O
Vill Nibhera, PO Manglore, Distt – Bulandshahar (UP).

..... Applicant

By Legal Practitioner – **Shri KK Misra, Advocate,**
Learned counsel for the Applicant.

Versus

1. Union of India, through, its Secretary, Ministry of Defence,
Government of India, New Delhi- 110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of
Defence, (Army) DHQ Post office New Delhi – 110011.
3. Officer-In-Charge, Ordnance Corps, Records, Secunderabad.
4. PCDA (P) Allahabad.

..... Respondents

By Legal Practitioner – **Shri Adesh Kumar Gupta, Advocate,**
Learned Counsel for the Respondents.

ORDER**“Hon’ble Lt Gen Gyan Bhushan, 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 20% to 50% for life.

2. The applicant is in receipt of disability pension and he has filed this Original Application for the relief of rounding off of the disability pension from 20% to 50%. Undisputed facts of the case, agreed by both learned counsel for the parties, is that the applicant was enrolled in the Army on 22.04.1963 and was discharged from service on 30.04.1985 (afternoon) in low medical category. The applicant is in receipt of 20% disability pension for life. The applicant approached the respondents for benefit of rounding off of disability pension vide representation dated 21.07.2014 but the same has been denied vide order dated 26.04.2017. Aggrieved, the applicant has filed this Original Application.

3. Heard Shri KK Misra, learned counsel for the applicant, Shri Adesh Kumar Gupta, learned counsel for the respondents and perused the record.

4. Delay in filing the Original Application has been condoned vide order dated 27.02.2018.

5. Learned counsel for the applicant submitted that the applicant is in receipt of 20% disability pension for life and as per Corrigendum PPO No. D/3494/85. 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 benefit of 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.

6. Learned counsel for the respondents has not filed counter affidavit. However, he submits that the PPO attached along with the Original Application indicates that the applicant is in receipt of 20% disability pension. He submitted that subject to verification of this fact, the case can be disposed of keeping in view various judgments of the Armed Forces Tribunals.

7. With the consent of learned counsel for both the parties, we have decided to dispose of this Original Application finally at this stage.

8. The law on rounding off of disability pension is well settled by the Hon'ble Supreme Court, keeping 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 reported in SCC 2011, XI, 429 and **Union of India & others vs. Ram Avtar & ors** (Civil Appeal No. 418 of 2012 dated 10th December 2014), 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 his disability to 50% from the existing 20%. However, respondents shall be at liberty to verify facts.

9. 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.”

10. The Original Application succeeds and is allowed. The applicant is entitled for benefit of rounding off and shall be paid

enhanced disability pension by rounding off from 20% to 50% for life from 01.01.1996 subject to verification of facts. The respondents are directed to pay the enhanced disability pension along with 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.

No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

Dated : March 2018
RSP/-

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