

Reserve

Court No. 1

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

ORIGINAL APPLICATION NO 485 of 2017

Monday, this the 12th day of March 2018

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

No. JC 640980M Ex Sub/SKT Rajesh Kumar, son of Sri Hira Lal,
resident of House No. EWS 403/404, Ravi Khand, Sharda Nagar,
Lucknow- 226012 (UP).

....Applicant

Ld. Counsel for the applicant: Shri RN. Singh, Advocate.

Verses

1. Union of India through the Secretary, Ministry of Defence,
New Delhi-110011.
2. Chief of Army Staff, Integrated Head Quarter, Ministry of
Defence (Army) South Block, New Delhi – 110011.
3. Officer-in-Charge, Sena Seva Corps Abhilekh, ASC
Records (South) Bangalore-560007.
4. Principal Controller of Defence Accounts (P) Draupadi
Ghat, Allahabad- 211014

.....Respondents

Ld. Counsel for the Respondents : Shri Dr Shailendra Sharma Atal
assisted by Maj Salen Xaxa,
OIC Legal

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

ORDER

1. The present Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with denial to round off the disability pension granted to the applicant.
2. We have heard Shri RN. Singh, learned counsel for the applicant and Dr Shailendra Sharma Atal, learned counsel for the respondents assisted by Maj Salen Xaxa, OIC, Legal Cell.
3. The facts, briefly stated, are that the applicant was enrolled in the Army on 30.10.1981 and was discharged from service on 01.11.2009 on completion of his term of engagement under Rule 13 (3) I (i) (a) of the Army Rules, 1954 in low medical category. His disability "CVA ISCHAEMIC" was opined by the Release Medical Board to be aggravated by military service. The degree of disablement was assessed at 30% for life by the Medical Board. Accordingly, the applicant was granted 30% disability pension for life with effect from 01.11.2009. The applicant represented his case for rounding off of the disability pension from 30% to 50% which has been rejected vide order dated 19.10.2016.
4. In the counter affidavit, the respondents have fairly admitted that the applicant is entitled to the benefit of rounding off of the disability pension. However, it is stated that no Government sanction has been received for extending the benefits of broad banding of disability pension to those individuals who were

discharged from service on completion of their terms of engagement. It is further averred that the case of the applicant shall be processed after receipt of specific Government Orders since the benefit of rounding off is not applicable to him in absence of revised Government policy.

5. Learned counsel for the applicant emphatically submits that even if the percentage of disability is considered to be less than 20%, then in that case too, the applicant would be entitled to disability pension. In support of his aforesaid submission, learned counsel for the applicant has placed reliance on the decision of Hon'ble Apex Court in the case of **Sukhvinder Singh vs. Union of India**, reported in (2014) 14 SCC 364. He further submits that in the case of percentage of disability being low, it should further be rounded off to 50% for life as per decision of the Hon'ble Apex Court in the case of **Union of India and Ors vs. Ram Avtar & ors (Civil Appeal No. 418 of 2012** dated 10th December 2014). In this context, it would be relevant to quote relevant portion of the observations made by the Hon'ble Apex Court in the case **Sukhvinder Singh** (supra) as under:-

“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service

without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty percent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty percent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty percent disability pension.”

6. We find force in the submissions of the learned counsel for the applicant. Keeping in view the facts of the present case and the pronouncements of the Hon’ble Apex Court in the cases of **Sukhvinder Singh** and **Ram Avtar** (supra), the applicant is entitled to rounding off of disability pension from 30% to 50% for life.

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. Accordingly, the O.A. is allowed. The impugned order is set aside. The respondents are directed to round off the disability pension granted to the applicant from 30% to 50% for life from the date of discharge. 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)

(Justice SVS Rathore)
Member (J)

Dated : March 2018
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