

RESERVED
Court No. 1

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

ORIGINAL APPLICATION No. 112 of 2018

Wednesday, this the 09th day of May, 2018

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”

**No. 1468680 - N, Ex - Havildar (Hony. Nb/Sub.)
Sachchida Nand Tiwari, S/o Late Badri Prasad Tiwari
R/o H.No. 592 - Ka/668 Subhani Khera, Telibagh
District - Lucknow (U.P.) Applicant**

Ld. Counsel for the Applicant : **Shri Parijaat Belaura,
Advocate.**

Versus

1. Union of India through the Secretary, Ministry of Defence New Delhi.
2. The Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi.
3. Officer-in-Charge Records, Bengal Engineer Group, PIN 908779, C/o 56 APO.
4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the Respondents. Standing Counsel : **Shri A.K. Sahu,**
Advocat, Addl. Central Govt.
Counsel assisted by **Maj Rajshri
Nigam,** OIC Legal Cell.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

“(I) To issue order direction to set aside order dated 15.06.2017 passed by Opposite Party No. 4 and order dated 21.07.2017 passed by Opposite party No. 3.

“(II) To issue order direction to grant disability pension @ 80% from the date of discharge i.e, 31.12.2005.

“(III) To issue order direction to round off disability pension from 80% to 100% giving the benefit of Govt. of India, Ministry of Defence letter dated 31.01.2001.

“(IV) To pay difference of arrear of disability pension along with 12% interest w.e.f date of discharged i.e., 31.12.2005.

“(V) Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.”

2. The facts in nutshell are that the applicant was enrolled in the Army on 24.12.1981 and was discharged from service on 31.12.2005 on completion of terms of engagement of 24 years and one month. Before discharge, he was brought before Release medical Board which found him in low medical category and assessed his composite disability as 70% for life. The disability was found to have been suffered while on bonafide Government duty and thus it was opined to be attributable to military service. The claim for disability pension

was processed and forwarded to PCDA (P) Allahabad which granted disability element **with effect from 01.01.2006** for life. Being aggrieved by the decision of Medical Authority, the applicant submitted an appeal on 12.08.2007. Review Medical Board was held on 04.07.2008 at Army Hospital (R&R) Delhi Cantt in which disability of the applicant was assessed as 80% for life. The claim for disability pension was forwarded de novo to PCDA (P) Allahabad which accepted the same and granted disability pension **with effect from 04.07.2008** for life. Thereafter, an application was moved by the applicant with the prayer to grant disability from the date of release from military service. Thereafter, the applicant also moved application dated 16.09.2016 with the prayer to grant rounding off of disability pension from 80% to 100%. This application did not find favour with the authority on the ground that the rounding off of disability pension was applicable to only those personnel whose tenure of service was cut short due to any disability/injury. The applicant again moved an application dated 14.10.2016 with the prayer to grant rounding off of disability pension from 80% to 100% but the same was turned down as no court order for grant of relief on that count was enclosed with the application. It is in this backdrop that the present O.A has come to be filed.

3. The distillate of submissions is that firstly that the disability at the rate of 80% be granted from the date of

discharge and secondly, the percentage of disability pension be rounded off from 80% to 100% from the date of release from the service.

4. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also gone through the material facts on record.

5. There is no denying of the fact that before discharge, the applicant was brought before the Release medical Board which examined and assessed his disability as 70% for life. The Applicant feeling aggrieved by the decision of the Medical authority filed an appeal. Be that as it may, the Applicant was examined by Review medical Board on 04.07.2008 which found his disability as 80% for life. Release Medical Board and Review medical Board are expert bodies whose opinion has to be given due weight and value. It is also significant to mention that the views expressed by the Supreme Court in Damodaran's case (supra) have been reiterated in other decisions too, viz., Union of India & Ors. vs. Jujhar Singh, (2011) 7 SCC 735, Union of India and Anr. vs. Talwinder Singh, (2012) 5 SCC 480.

6. Thus it does not appeal to us to interfere with the opinion of either the Release Medical Board which assessed the disability as 70% for life or the Review Medical Board which assessed the disability as 80% with effect from 04.07.2008.

7. Coming to the question of rounding off, the Learned Counsel for the Applicant propped up his case on the ground that the case of the Applicant is a pre-eminently fit case for grant of rounding off of disability pension as at the time of discharge, he was placed in low medical category and his disability was assessed at 70% and subsequently at 80% for life by the Re-Survey Medical Board.

8. On the other hand, Learned Counsel for the respondents submitted that the benefits of rounding off of disability pension would not be attracted as the Applicant was discharged on completion of the period of engagement in the Army and that he was not invalided out of service. It is further submitted that the benefits of enhancement would accrue only to those who stood invalided out of service because their tenure of service was cut short due to invalidment on account of disability or war injury.

9. The Apex Court has conclusively and unequivocally held in *Union of India v. Ram Avtar* (Civil Appeal No. 418 of 2012) that the order for broad banding or rounding off is not restricted to invalidment cases only. It is also applicable to personnel who have proceeded on normal retirement or discharge after completion of terms of engagement. It has been amply made clear under the decision that an Armed Forces personnel retired on completion of tenure with disability attributable to or

aggravated by military service is eligible for broad banding of disability element of disability pension. Pursuant to that decision Ministry of Defence vide F.No.3(11)2010-D(Pen/Legal) Pt V dated 18th April, 2016 issued orders for implementation of Court/Armed Forces Tribunal orders granting broad banding of disability element to Armed Forces personnel retired/discharged on completion of term of engagement with disability attributable to/aggravated by military service, from the date mentioned in the orders. The relevant portion of the decision of Hon'ble Apex Court in **Ram Avtar's** case being relevant is excerpted below:-

"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 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."

10. In view of the law emerging out of the above mentioned judgment and as a result of foregoing discussion, we converge to the view that the impugned order passed by the Respondents in refusing the rounding off benefits to the Applicant has to be set aside in view of the dictum laid down by Hon'ble The Apex Court.

ORDER

11. In the result, the Original Application is partially allowed and the impugned order passed by respondent by which the benefits of rounding off of disability pension was rejected, is set aside. The Applicant is entitled for the benefit of rounding off of his disability of 80% for life to 100% for life with effect from 04.07.2008. The enhanced disability element of pension alongwith the arrears is directed to be disbursed to the Applicant from the due date within four months from the date certified copy of this order is served upon the respondents. For delay beyond four months the Applicant shall be paid interest @ 9% on arrears till the date of payment.

12. There will be no orders as to costs.

(Air Marshal BBP Sinha) (Justice S.V.S. Rathore)
Member (A) Member (J)

Dated: May, 09 ,2018
MH/-