

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)****ORIGINAL APPLICATION No 280 of 2018**Friday, this the 01st day of June, 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

No. 4183482K Ex NK Bhagwat Singh Bisht, son of Shri N.S. Bisht, resident of Village Mandalsera, Post Office Bageshwar district Bageshwar.

..... ApplicantLd. Counsel for the Applicant : **Shri CS Rawat, Advocate.**

Versus

1. Union of India through Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence, (Army) New Delhi.
3. Director, Pension/Policy, Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi.
4. Record Officer, the Kumaon Regiment Pin-900473 C/o 56 APO.
5. P.C.D.A. P (Pension) Allahabad

.....RespondentsLd. Counsel for the Respondents. : **Shri R.C. Shukla,**
Addl. Central Govt. Standing Counsel**ORDER****Per Hon’ble Mr Justice SVS Rathore , Member (J)**

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:-

To summon the entire records and grant rounding off pension benefits to the petitioner as per the Government Circular/Order dated 6.4.2011 along with arrear from the due date i.e. 1.6.2008.

To such other suitable order which this Hon'ble Tribunal may deemed fit and proper in the facts and circumstances of the case.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 15.12.1988 and after rendering 19 years of service, he was discharged from service through Release Medical Board on 01.06.2008 from the post of Naik due to non availability of sheltered appointment. Along with the O.A., copy of the discharge book has been filed by the applicant as Annexure-2. It is an admitted fact while serving with 20 Kumaun, the applicant sustained severe injury on 30.04.1994 which was assessed as 20% for life and regarded as attributable to military service. Subsequently, the applicant was placed in permanent low medical category on 17.12.1998 but was retained in service. On issuance of policy to discharge all LMC personnel vide order dated 27.06.2007, after complying with the requisite formalities, the applicant was discharged under Army Rule 13 (3) III (V) read in conjunction with Army Rule 13 (2A) being not recommended for retention in service and non-availability of sheltered appointment on completion of 19 years 05 months and 17 days of service and was granted service pension @ 2985/- per month. The disability of the applicant as per Release Medical Board was 20% for life. However, it is surprising that the in counter affidavit the disability has been mentioned as 40% for life. The PCDA (P) Allahabad, as per respondents has accepted disability of the applicant @ 20% and granted the benefit @ 50% after rounding off.

3. Submission of learned counsel for the respondents is that the applicant has already been granted benefit of rounding off to 50% for life and he is getting the same. In paras 6, 7 and 8 of the counter affidavit, the respondents have averred, to quote:

“6. That the facts mentioned at Para 1 above reveals that the petitioner was discharged from service on administrative grounds in LMC based on which PCDA(P) Allahabad vide note below column 11 of PPO No. DE/017017/2008 (ARMY) dated 02 Sep 2008 (CTC attached as Annexure CA-1) has already mentioned that the petitioner has been sanctioned disability element being an invalidment case under the provisions GOI, MoD letter No. 1(2)/97/D(PEN-C) dated 31 Jan 2001 which means the disability element mentioned in the ibid PPO is consisting the benefit of rounding off @ 50%.

7. That as per 5th CPC, 100 disability element was Rs. 1150/- per month. Under column 7 of PPO No. DE/017017/2008 (ARMY) dated 02 Sep 2008 (CTC attached as Annexure CA-1), the petitioner has been granted disability element after rounding off same at 50% which comes to Rs 775/-. In addition to this, the petitioner has been sanctioned 50% dearness pay (i.e. 50% of Rs. 775 = 388) which has been merged in the total amount which comes to Rs. 1163/-. Therefore, the total amount of Rs. 1163/- mentioned under column 7 contains two elements i.e. 775/- (50% of disability element) + Rs. 388 (50% dearness pay) = Rs. 1163/-.

8. That subsequently, on implementation of 6th CPC report, the benefit of rounding off disability element in respect of the petitioner was revised from Rs.1163/- to Rs. 1931/- per month by the PCDA (P) Allahabad corrigendum PPO No. DE/CRRRI022395/2010 dated 28 Jun 2010 (Copy attached with MA as Page 38 of Annexure No. 4). The calculation of Rs.1931 i.e. 50% of disability element as notified in ibid PPO arrived as under:-

(a) Total Pay revised to Rs. 12870/- (as mentioned in corrigendum PPO dt 28 Jun 2010)

(b) To arrive at 100% disability -12870 x 30% = Rs. 3861/-.

(c) To arrive at 50% - Rs. 3861/2 = Rs. 1931/-”

4. We have examined said averments of the respondents. The applicant has filed his discharge book along with the O.A. wherein his last drawn emoluments are mentioned as Rs. 5722/- as per 5th CPC. Thereafter the same has been revised and as per counter affidavit, the revised pay of the applicant was Rs. 12870/- and disability has been calculated @50% which comes to Rs. 1931/-.

Copy of the PPO has been filed which shows that the same is being paid to the applicant.

5. Learned counsel for the applicant was granted time to seek instructions on the point as to what was the exact last salary drawn by the applicant, but he could not obtain instructions from the applicant. However, the same is established by the discharge book filed by the applicant himself. Therefore, apparently, there is no mistake in the calculation of disability pension and the applicant has already been granted benefit of rounding off of disability pension and the same has been rounded off from 20% to 50%. Learned counsel for the applicant has made a prayer that liberty be given to the applicant to approach the Tribunal to seek redressal in case any discrepancy is found regarding last salary drawn by the applicant.

6. Keeping in view the observations made hereinabove, since the applicant is already getting the benefit of rounding off, therefore, nothing survives to be decided in this O.A. which deserves to be dismissed.

7. The O.A. is accordingly dismissed. However, liberty is given to the applicant to seek remedy available in law in case any discrepancy on the point of last pay drawn is established.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: June 01 , 2018
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