

**Reserved**

**Court No. 1**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**ORIGINAL APPLICATION No 14 of 2018**

Wednesday this the 23<sup>rd</sup> day of May 2018

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

Ex-JC 752031-F Nb Sub/Tech Electrician Jahad Singh son of Shri Chandra Singh, resident of D-145, South City, Rae Bareli Road, Lucknow – 226025 (UP).

.....Applicant

Ld. Counsels for the Applicant: **Col Rakesh Johri (Retd) & Shri Bhanu Pratap Singh**

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi – 110001.
2. Chief of the Army Staff, Integrated Headquarters of the Min of Def, South Block, New Delhi, 110001
3. Adjutant General, Integrated HQs of the Min of Def. South Block, New Delhi - 110001.
4. Officer-in-Charge, Records EME, PIN 900453, C/O. 56 APO.
5. Principal Controller Defence Accounts Pensions, Draupadi Ghat, Allahabad – 211014.

...Respondents

Ld. Counsel for the Respondents: **Shri Yogesh Kesarwani,**  
Addl Central Government Counsel

(ORDER)

**Per Hon'ble Air Marshal BBP Sinha, Member (A)**

1. The applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:—

- (a) *Issue/pass an order quashing order dated pertaining to denial of correct Disability pension to the applicant (Annexure A-1) and (A-2).*
- (b) *Issue/pass an order or a direction to the respondents to work out and grant correct disability percentage to the Applicant from the date of retirement w.e.f 01.04.2002.*
- (c) *Issue/pass an order or a direction to the respondents to grant benefits of Broad Banding/rounding off from the due date.*
- (d) *Issue/pass an order to the respondents to grant benefits of One Rank One Pension to the Applicant.*
- (e) *Issue/pass an order or a direction to the respondents to issue a corrigendum to the Pension Payment Order.*
- (f) *Issue/pass an order to respondents to pay interest on Arrears @ 09 Per annum to the applicant from the date of discharge.*
- (g) *Issue/pass any other order or direction as this Honourable Tribunal may deem fit in the circumstances of the case.*
- (h) *Allow this application with costs.*

2. Facts necessary for disposal of the present O.A. couched in brevity are that the applicant was enrolled in the Army in the Corps of Electrical and Mechanical Engineers on 25.03.1976. He was promoted to the rank of Havildar Major Technical (Electrical) on 20.06.1989. Subsequently on 01.09.1995 was promoted to the rank of Naib Subedar and placed in Group-A (Group-X after implementation of Sixth CPC). While on casual leave, the applicant on 21.07.1995 met with an accident and sustained

fracture of Shaft Femur (Lt). Consequently, court of inquiry was held which opined that the disability suffered by the applicant was attributable to military service. The applicant was downgraded to low medical category A-2 (P) with effect from 10.07.1999. The applicant was discharged on 31.02.2002 after completion of 26 years of service. On 01.04.2004 the applicant was re-employed at Station Workshop EME, Delhi Cantt. Prior to discharge, the applicant was subjected to Release Medical Board which considered the disability suffered by the applicant as attributable to military service and assessed @ 30% for life.

3. Aggrieved with the wrong fixation of disability pension, i.e. disability pension for the rank of Havildar instead of a Naib Subedar, the applicant preferred a representation to the Records EME, Secunderabad dated 19.09.2016 claiming pension on the basis of minimum of fitment table for disability and war injury element in respect to pre-2006 retirees with effect from 01.01.2006 in pursuance to PCDA (Pensions) Allahabad circular letter no. 560 dated 08.06.2016 and Government of India letter dated 18.05.2016. The applicant also claimed benefit of rounding of disability pension in accordance with PCDA (Pension) Allahabad Circular No. 561 dated 10.06.2016 and Government of India letter dated 18.04.2016. The respondents rejected the representation of the applicant on the grounds that, firstly; he is entitled to disability pension for the rank of Havildar and not Naik Subedar because when he received the injury, he was holding rank of Havildar, and secondly; as far as rounding off is concerned, the respondents took a stand that since the applicant was discharged from service on completion of terms of engagement, he is not entitled to benefits of rounding off of disability pension; and the benefits

of rounding off in view of Circular No. 561 dated 10.06.2016 is applicable to those in favour there is a judicial order passed by the Armed Forces Tribunal. The applicant again represented his case to the EME Records, Secunderabad and PCDA (P) on 16.03.2017 followed by reminder dated 03.05.2017. However, he did not get any relief.

4. The primary grievance of the applicant in the present O.A. is that although the applicant was promoted to the rank of Naib Subedar, but after being locally discharged on 31.03.2002, he is receiving disability element of Havildar Major though it should have been of the rank of Naib Subedar. Learned counsel for the applicant has submitted that disability element is to be assessed in accordance with the provisions of Regulation 180 of Pension Regulations for the Army, 1961 (Part-1). On the other hand, learned counsel for the respondents has relied upon Regulation 179 of said Regulations to deny the disability pension of Naib Subedar.

5. Regulations 179 and 180, for convenience sake are reproduced as under:-

**“Regulation 179 : (Disability at the time of retirement/discharge) :** An individual retired/discharged on completion of tenure or on completion of service limits or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20 percent or more, and service element if the degree of disability is less than 20 per cent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the

disability pension/service element, as the case may be.

(2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of rank held on the date on which the wound/injury was sustained or in the case of disease on the date of first removal from duty on account of that disease.

**“Regulation 180 : (Rank for assessment of disability pension) :** The rank for the purpose of assessment of service element and disability element of disability pension, shall be the substantive rank or higher paid rank, if any held by the individual on any of the following dates whichever is most favourable.

- (a) the date of discharge/or invalidment from service, or
- (b) the date on which he/she sustained the wound or injury or was first removed from duty on account of a disease causing his disablement, or
- (c) if he/she rendered further service and during and as a result such service suffered aggravation of disability, the date of the later removal from duty on account of the disability.”

6. The issue of correct rank for award of disability pension element of pension and the interpretation of Regulation 179 and 180 (supra) is no more RES INTEGRA. The Armed Forces Tribunal, Regional Bench, Chandigarh in OA. No. 2869 or 2012, *Hazaril Lal vs Union of India & ors* decided on 13.05.2014 has observed thus:

*“10. From the above it is apparent that Regulation 180 falls under the heading ‘Rank for assessment of disability pension’. Thus the aspect of rank for assessment of disability pension has specifically been dealt with in Regulation 180 which provides that for the purpose of assessing the disability pension, the rank shall be substantive rank or higher higher paid acting rank of the individual on any of the dates mentioned in clause (a), (b) and (c) of Regulation 180. It has further been mentioned in*

*the Regulation that out of the three dates whichever is favourable to the petitioner would be taken into account for the purpose of calculating the disability pension.*

*11. So far as Regulation 179 is concerned, it is clear that the same is applicable to the disability at the time of retirement/discharge and it is the disability element which forms matter of Regulation 179 (2) and not the rank on which such disability element has to be paid. The rank on which such disability has to be paid has specifically been dealt with in Regulation 180. If what is being argued by learned counsel for the respondents is accepted then the provisions of Regulation 180 would be otiose.*

*12. In view of the above discussion, there is no doubt left in this preposition that the petitioner is entitled for disability element of pension for the Honorary rank of Lieutenant which was conferred on him during service.”*

7. In the light of law emerging out from the above decision, we are in total agreement with the decision of the co-ordinate Bench in the case of ***Hazaril Lal*** (supra). Hence, the applicant will be entitled to disability element of disability pension of the rank of Naib Subedar from the date of his discharge, i.e. 31.02.2002.

8. The learned counsel for the applicant has brought out consistent underpayment of disability element of disability pension as per Havildar rank instead of Naib Subedar rank and indicated the difference as per Circular No. 282 of PCDA (P) Allahabad (IV CPC) and subsequent Circulars and letters as per V and VI CPC.

9. It is obvious that the applicant is being paid disability element for the rank of Havildar Major from the date of discharge though the applicant was entitled for disability element of pension for the higher rank of Naib Subedar to which he was promoted during service tenure. Additionally, he is entitled to the benefit of rounding off in view of

directions given by Hon'ble Supreme Court in the case of *Union of India and Ors vs. Ram Avtar & ors* (Civil Appeal No 418 of 2012 dated 10th December 2014). Relevant portion of the 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.*

xxx                      xxx                      xxx

*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.*

*8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us.”*

10. In view of our observations made above, we allow the O.A. The impugned orders are set aside. The applicant is held entitled to disability element of disability pension for the rank of Naib Subedar from the date of discharge i.e. 31.03.2002 as per entitlement in IV, V, VI and VII CPC. He is also entitled to benefit of rounding off of the disability pension from 20% to 50%. However, rounding off shall be payable from

three years prior to the filing of the instant OA. The date of filing of the O.A. is 30.08.2017. The respondents including the fifth respondent shall ensure that an amended PPO is issued to the applicant whereby he gets all his dues. The applicant shall further be entitled to interest on arrears of his Naib Subedar disability element of pension @ 9 % interest with effect from 19.09.2016 when he first represented his case with the respondents. The entire exercise is to be completed within four months from the date of production of a certified copy of this order.

11. No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

Dated: May, 2018  
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