

(Court No. 1)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Review Application No. 32 of 2018****With****M.A.No. 1104 of 2018****(In re: O.A.No. 12 of 2013)**Thursday, the 19<sup>th</sup> day of April, 2018**“Hon’ble Mr. Justice SVS Rathore, Member (J)  
Hon’ble Air Marshal BBP Sinha, Member (A)”**

Ex Sub Major Dinesh Pal Singh (JC-327370-H), son of late Shiv Nath Singh, resident of village Mahsonamau, Post Office Chhibramau, District Hardoi (UP)

..... Applicant

Learned counsel for the applicant: **Shri R. Chandra, Advocate**

Versus

1. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi- 110011.
2. Engineer-in-Chief, Integrated HQ of Ministry of Defence (Army), New Delhi-110011
3. Officer-In-Charge, Bengal Engineer Group and Centre, Roorkee-247667
4. Principal Controller Defence Account (Pension), Draupadi Ghat, Allahabad.

..... Respondents

Learned counsel for the respondents: **Dr Shailendra Sharma Atal,**  
assisted by Maj Salen Xaxa,  
OIC Legal Cell.

**ORDER**

1. This Review Application has been filed under Rule 18(3) of the Armed Forces Tribunal (Procedure) Rules, 2008 for review of final order dated 16.09.2015 passed in OA No. 12 of 2013.

2. By the judgment and order under review, the Tribunal had granted the following relief:

*“ In view of the facts, circumstances and case laws discussed above, we are of the considered view that the applicant is entitled to grant of disability pension @ 50% for life. The O.A.No. 12 of 2013 is allowed. The respondents are directed to grant disability pension to the applicant @ 50% for life from the date of discharge and pay arrears of disability pension with interest @ 9% per annum till the date of actual payment. The Respondents are directed to give effect to the order within three months from the date of receipt of a certified copy of this order.”*

3. It transpires from the order under review that the disability of the applicant was assessed by the Release Medical Board and it was held to be 50% for life, as observed in para 2 of the order under review. This disability of 50% for life was to be rounded off to 75% in view of the Policy dated 31.01.2001. The applicant thereafter moved an application for correction of the order in the array of parties, which was disposed of vide order dated 28.10.2015, but at that time, no error regarding rounding off of disability pension in the order was pointed out. Thereafter the applicant filed an OA No. nil of 2017 alongwith MA No. 1421 of 2017 for condonation of delay in filing the OA. Vide order dated 31.01.2018, the delay was condoned and after admission of the OA, the same was disposed of. For convenience, the said order dated 31.01.2018 is reproduced as under:

**“M.A.No.231 of 2018**

*Objection filed by the learned counsel for the respondents on the application for condonation of delay is taken on record. M.A. aforesaid stands disposed of.*

*Learned counsel for the applicant submits that he does not intend to file any reply to the aforesaid objection.*

**M.A. No. 1421 of 2017**

*This is an application for condonation of delay in filing the O.A. The grounds shown in the affidavit filed in support of the O.A. seem to be sufficient.*

*Accordingly, the application is allowed and the delay in filing the O.A. is hereby condoned.*

*Having heard the learned counsel for the parties, we find that it is a fit case for admission.*

***Admit.***

*Heard learned counsel for the parties and with their consent, this O.A. is being disposed of at the admission stage.*

*By means of this O.A., the applicant has made a prayer for the benefit of rounding off of disability pension. The applicant had also filed O.A.No.12 of 2013 which had been decided vide order dated 16.09.2015. The said O.A. was allowed and the applicant was granted disability pension @ 50% for life from the date of discharge.*

*The applicant, instead of filing a review application for review of the aforesaid order passed in the earlier O.A., has filed a separate O.A. Such a prayer is not maintainable. In case the applicant is aggrieved with the order passed in the earlier O.A., he ought to have moved a review application for review of the said order.*

*Learned counsel for the applicant submits that he does not intend to press this O.A. and it may be dismissed as not pressed with liberty to file a review application.*

*Accordingly, this O.A. is dismissed as not pressed with liberty as aforesaid.”*

4. In pursuance of the aforesaid order, this review application has been filed.

5. The prayer of the applicant is that since the disability of the applicant was assessed to be 50% for life, therefore, in view of the Policy dated 31.01.2001, specific direction for grant of the benefit of its rounding off to 75% ought to have been given to the respondents. It is submitted that this is an error apparent on the face of record, which needs to be corrected and the order dated 16.09.2015 is liable to be reviewed and corrected accordingly.

6. On behalf of the respondents, it is submitted that this review application is delayed and such a delay cannot be condoned. During the course of arguments, however, on a query made by us, learned counsel for the respondents did not dispute that it is the Policy of the respondents themselves to grant the benefit of rounding off and for the said purpose, army personnel need not come to the Tribunal and that it is obligatory on the part of the respondents to grant this benefit to all eligible army personnel in pursuance of their own Policy.

7. It is apparent on the face of record that the applicant is continuously pursuing for his rights and he was entitled to the benefit of rounding off of disability pension since the initial stage when it was granted to him. We are of the considered view that in case we take a very technical view and reject the prayer of the applicant for rounding off, it would mean to permit the illegality to perpetuate and frustrate the genuine claim and legal right of the applicant with regard to the benefit of rounding off of the disability pension in pursuance of the Policy (supra).

8. Therefore, with a view to achieve the ends of justice, we allow MA No. 1104 of 2018 and condone the delay in filing this review application.

9. Since there is an error apparent on the face of record in the order dated 16.09.2015 as indicated above, we allow this review application and correct the operative portion of the said order, which shall now be read as under:

*“ In view of the facts, circumstances and case laws discussed above, we are of the considered view that the applicant is entitled to grant of disability pension @ 50% for life. The O.A.No. 12 of 2013 is allowed. The respondents are directed to grant disability pension to the applicant @ 50% for life, which shall be rounded off to 75% for life from the date of discharge and pay arrears of disability pension with interest @ 9% per annum till the date of actual payment. The Respondents are directed to give effect to the order within three months from the date of receipt of a certified copy of this order.”*

This order of review shall form part of the original order. Copy of this order shall also be issued alongwith the original order under review whenever prayed for.

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

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

April 19, 2018  
LN/-