

**Court No.1**  
**Reserved Judgment**

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

**Original Application No 409 of 2018**

Thursday this the 30<sup>th</sup> day of August, 2018

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

Lt Col Chetan Kumar Singh (Retd) (IC-26023Y)  
S/o (Late) Dr. Hori Singh, R/o- 42 & 43, Uma Vihar,  
Dayal Bagh, Agra – 282005 (U.P.)

..... Applicant

Ld. Counsel for the  
Applicant

- **Col R.A. Pandey (Retd) and  
Shri Arun Kumar Advocates**

Versus

1. Union of India through the Secretary,  
Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, South Block,  
DHQ PO, New Delhi - 110011.
3. The Principal Controller of Defence Account (Pension),  
Draupadi Ghat, Allahabad - 211014.

..... Respondents

OIC, Legal Cell

- **Maj Salen Xaxa,**

## JUDGMENT

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

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the reliefs as under:-

*“(a) Issue an appropriate order or direction of a suitable nature quashing the impugned letter dated 14.07.2009 issued by Pr. CDA (P), Allahabad/respondent no. 3 by which the respondent has turned down the applicant’s request to grant the benefit of rounding off of his 30% Disability element to 50% from 01.03.97 (Date of Retirement on Superannuation) in terms of Govt. of India Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 stating the reason (as endorsed in PPO No. M/DIS/Vth CPC/76/2001), that said provision is only **“applicable to those, released/invalided out of service on or after 1.1.96”**, and direct the respondent to modify the aforesaid impugned Circular No. 410 dated 13.05.2009 incorporating the benefit of rounding off of 20% to 50% Disability element to 50% w.e.f. 01.01.1996 as laid down by Hon’ble Supreme Court in **Avtar Singh’s case** (supra) and issue a Corr. PPO rounding off of his 30% Disability element to 50% from 01.03.1997 for life and pay the arrears of applicant’s pension accordingly, within a period to be specified by this Hon’ble Tribunal.*

*(b) Issue any other order suitable order or direction which this Hon’ble Tribunal may deem just and proper in the facts and circumstances of the case.*

*(c) Costs of the application may be awarded in favour of the applicant.”*

2. The present application has been preferred for relief of rounding off of disability pension already granted to the applicant.

Undisputed fact is that the applicant was commissioned in the Indian Army on 24.04.66 and he retired from service on attaining the age of retirement on 28.02.1997 (afternoon) in low medical category. He is in receipt of 30% disability pension for life since retirement which has been confirmed by the PPO attached with O.A. and the respondents have agreed to the same.

3. With the consent of learned counsel for the parties we proceed to decide this Original Application at the admission stage itself.

4. This application has been filed for rounding off of disability pension which is a recurring cause of action. Application for condonation of delay is allowed and delay in filing the O.A. is condoned.

5. Heard Col R.A. Pandey (Retd) and Shri Arun Kumar, Learned Counsel for the applicants and Maj Salen Xaxa, OIC Legal Cell.

6. Learned Counsel for the applicant submitted that as per Govt of India, Ministry of Defence, New Delhi letter No.1(2)/97/1/D(Pen-C) dated 31.01.2001, Army Officers have been granted benefit of rounding off of disability pension w.e.f. 01.01.1996. Therefore the disability pension of the applicant should have been rounded off from 30% to 50% however the same has been denied by PCDA (P) Allahabad. Additionally the representation of the applicant for the benefit of rounding off of disability pension has also been turned down by the Army

Headquarters. Learned Counsel for the applicant further submitted that in catena of judgments of the Hon'ble Apex Court and the Armed Forces Tribunals, the benefit of rounding off has been given to Armed Forces Personnel who have superannuated in low medical category with disability pension. Therefore, learned counsel pleaded that the benefit of rounding off should also be provided to the applicant.

7. **Per contra**, the Learned Counsel for the respondents has submitted that in view of the Government of India, Ministry of Defence, New Delhi, letter No. 1(2)/97/1/D(Pen-C) dated 31.01.2001, the applicant is eligible only for disability pension @ 30% as assessed by Medical Board. The rounding off benefit is applicable only to those personnel who are invalided out of service. Personnel who retire on attaining the age of superannuation are not eligible to the benefit of the rounding off of disability pension. He further submitted that since the applicant has superannuated on attaining the age of retirement, he is not entitled to the rounding off of disability pension. He pleaded for the O.A. to be dismissed.

8. In light of above facts the only issue for consideration before us is as to whether the applicant is entitled to the benefits of rounding off or not in view of the fact he has superannuated from service on attaining the age of retirement and has not been invalided out. It is not disputed that at the time of retirement, the applicant was in low medical category and presently he is in receipt of disability pension @ 30% for life. We are of the opinion

that the subject matter is no more res-integra. This specific matter of rounding off benefits to personnel proceeding on superannuation has been decided by the Hon'ble Supreme Court. In ***Union of India and Ors vs. Ram Avtar & ors (Civil Appeal No. 418 of 2012 dated 10<sup>th</sup> December 2014)*** in which Hon'ble The Apex Court nodded in disapproval at the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision 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.*

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

9. Thus in view of the settled proposition of law on this matter, we are of the opinion that the applicant, who has retired from service on attaining the age of superannuation and is in receipt of disability pension, would be entitled to the benefit of rounding off. The applicant is therefore entitled to the benefit of rounding off of disability from 30% for life to 50% for life from the date of his discharge i.e. 01.03.1997.

10. So far as entitlement of the applicant to receive arrears of disability pension is concerned, 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."*

11. The applicant is therefore entitled to the benefit of rounding off of disability pension to 50% from date of his discharge.

12. In the result, the Original Application 409 of 2018 succeeds and is allowed. The impugned order rejecting the rounding off of disability pension is set aside. The applicant is entitled for the benefit of rounding off and shall be paid enhanced disability element of pension by extending the benefit of rounding off from existing @ 20% for life to 50% for life from the date of discharge i.e. 01.03.1997. The complete exercise shall be completed within four months from the date of receipt of certified copy of this order. In case the respondents fail to pay the amount to the applicant within the stipulated time, they will have to pay interest @ 9% from due date till the date of actual payment.

No order as to costs.

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

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

Dated : August, 2018  
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