

**RESERVED JUDGMENT**  
**Court No.1(B)**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Original Application No. 62 of 2018**

Monday this the 10<sup>th</sup> day of September, 2018

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

IC-38529K Lt Colonel Sanjeev Sahai (Retd),  
Son of Late Shri Rajendra Sahai, 408/4, Dr Baij Nath Road,  
New Hyderabad, Lucknow- 226007

..... **Applicant**

Ld. Counsel for the Applicant – **Col (Retd) Y.R. Sharma, Advocate**

Versus

1. Union of India, Through Secretary, Ministry of Defence,  
South Block, New Delhi - 110011.
2. Chief of the Army Staff, Army Headquarters,  
South Block, New Delhi - 110011.
3. Adjutant General, ADG (PS) AG's Branch,  
IHQ of MOD (Army), Army Headquarters,  
New Delhi – 110001.
4. Principal Controller of Defence Accounts (Pension),  
Draupadi Ghat, Allahabad.(U.P.)

..... **Respondents**

Ld. Counsel for the Respondents – **Shri R.C. Shukla,  
Central Govt Counsel**

**ORDER**

**“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- (a) *Set aside the ADG Personnel Services, AG’s Branch, Integrated HQ of MOD (Army) letter No B/40431/BB/2017/AG/PS-4 (Imp-1) dated 01 Aug 2017, rejecting the request of the applicant for broad banding being without application of mind. The Impugned Order is attached as **Annexure A-1**.*
- (b) *Direct Respondents to grant benefit of rounding off/broad banding of existing disability element of percentage from 20% to 50% with effect from the date of retirement i.e. 31 Oct 2004.*
- (c) *Direct the Respondents to pay an interest @ 12% per annum on the arrears.*
- (d) *Award the cost of the litigation of Rs. 50,000=00 (Rupees Fifty Thousand Only) to the applicant.*
- (e) *Issue/pass an order or direction as the Honourable Tribunal may deem fit in the circumstances of the case.*
- (f) *Allow this Original Application with costs.*

2. Undisputed facts of the case, agreed by learned counsel for the parties, is that the applicant was commissioned in the Army on 22.12.1979 and was discharged from service on his own request on 31.10.2004, after rendering approximately 25 years of service. Release Medical Board held at the time of discharge assessed the disability (i) ‘LUMBAR CERVICAL SPONDYLOSIS’ as 20% for life and considered as aggravated by military service and disability (ii) ‘OBESITY WITH HYPERLIPIDEMIA’ as neither attributable to nor aggravated by

military service. Composite disability was assessed as 20% for life. As per rule at that time, his claim for grant of disability pension was rejected by the respondents on the ground that he proceeded on voluntary retirement. However, with the change of rules after declaration of 6<sup>th</sup> Pay Commission and in accordance with Govt. of India, Min of Defence letter dated 19.05.2017, he was granted disability pension @ 20% for life with effect from 01.01.2006 for ID No (i) and PPO for the same was issued but his request for grant of rounding off of disability pension was turned down by the respondents. Aggrieved, the applicant has filed this Original Application.

3. Learned counsel for the applicant vehemently prayed that the applicant is already in receipt of 20% disability pension and that the same should be rounded off to 50% in the light of a catena of judgments of the Hon'ble Apex Court and the Armed Forces Tribunals on this matter.

4. **Per Contra**, learned counsel for the respondents submitted that the competent authority has granted the disability element of disability pension @ 20% for life w.e.f. 01.01.2006. He submitted that concept of broad banding of percentage of disability/war injury, as provided in Para 7.2 of Min of Def letter dated 31.01.2001, shall be extended to Armed Forces Officers and PBORs who were invalided out of service prior to 01.01.1996 and are in receipt of disability/war injury pension as on 01.07.2009. Since the applicant was not invalided out, his claim for rounding off of disability pension was dismissed. He pleaded that the O.A. be dismissed.

5. Heard learned counsel for the parties and perused the record.
6. The law on the point of grant of disability pension and its rounding off is no more res integra. In the case of ***Union of India and Ors vs Ram Avtar & ors (Civil appeal No 418 of 2012 dated 10<sup>th</sup> December 2014)*** Hon'ble Apex Court nodded in disapproval of policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have been invalidated out of service on account of being in low medical category or who has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to be suffering from some disability. 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."*

7. In the instant case, there is no dispute that the applicant was granted 20% disability pension for life. This fact is also established from the PPO (Annexure No. A-3 to the O.A.) filed on record.

8. As to the period of entitlement of the applicant to receive arrears of disability pension, 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.”*

9. Thus, it will be in the interest of justice, if the benefit of the Armed Forces Tribunal Principal Bench judgment, as quoted above, is extended to the applicant. Hence, applicant is entitled to rounding off of disability element from 20% for life to 50% for life from 01.01.2006 as this is a case of premature retirement on own request and his eligibility to disability pension is w.e.f. 01.01.2006.

10. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The impugned order passed by the respondents, rejecting the broad banding of disability pension is set aside. The disability pension assessed as 20% for life shall stand

rounded off to 50% for life from the 01.01.2006. The respondents are directed to grant rounding off of disability pension to the applicant alongwith arrears within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

There shall be no order as to cost.

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

Dated : September, 2018  
ukt/-

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