

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

**Review Application No. 45 of 2018**

**Along with MA No. 1496 of 2018**

**In re:**

**OA No. 680 of 2017**

JC-182304W Ex Sub Beda Nand Thakur, son of Late Murlidhar Thakur,  
A-09, Yamuna Vihar Colony, PCDA (P) Draupadi Ghat, Allahabad –  
211014 (UP)

.... Applicant

Vs.

Union of India and others

.... Respondents.

Counsel for the applicant:

Shri R.Chandra, Advocate

Counsel for the respondents:

Sri Anurag Mishra, Addl Central Govt  
Counsel

**ORDER**

1. The present Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 has been preferred by the applicant accompanied by Application for condonation of delay in filing the Review Application.

2. Rule 18 of the Armed Forces Tribunal (Procedure) Rules 2008 restricts filing of Review Application within thirty days of the date of the impugned order. However, in the peculiar facts and circumstances of the case, we condone the delay and proceed to dispose of the Review Application on merits.

3. It is pleaded by learned counsel for the applicant that this Tribunal vide order dated 01.12.2017 had allowed O.A. No. 680 of 2017 and

granted the benefit of rounding off of the disability pension to the applicant @ 50% for life from three years preceding the date of filing of the O.A. For convenience sake, relevant portion of order dated 18.12.2017 is reproduced as under:

*“In the light of the aforesaid judgment, the applicant’s disability pension is rounded off to 50 % for life from three preceding years from the date of filing of the present petition, i.e. with effect from 16.09.2014.*

*We dispose of the present O.A. in terms of the above judgment with a direction to the respondents to release the disability pension @ 50% along with arrears within a period of four months from the date of receipt of a certified copy of this order. In case the order is not complied with within the stipulated period, the amount so accrued shall carry interest @ 10% per annum from the due date, till actual payment thereof.”*

4. Learned counsel for the applicant further submitted that the larger Bench of Armed Forces Tribunal, Principal Bench, New Delhi, of which one of us (Hon’ble Mr. Justice SVS Rathore, Member J) was also a Member vide order dated 01.12.2017 passed in in O.A. No. 1439 of 2016 ***Ex Sergeant Girish Kumar vs. Union of India and others***, had enunciated that Armed Forces personnel who retired pre 01.01.1996 will be entitled to the arrears of broad banding with effect from 01.01.1996 and in case of those retired on or after 01.01.1996 will be entitled to arrears with effect from the date of their retirement. The directions so issued, for convenience sake are reproduced as under:-

*“That Armed Forces Personnel who have been invalided/ superannuated/ completed terms of service/discharged under normal circumstances with disability, pre or post 01.01.1996 will be entitled to broad banding of disability/war injury element. Armed Forces personnel who have retired pre 01.01.1996 will be entitled to the arrears of broad banding with effect from 01.01.1996 and in the case of those who retired on or after 01.01.1996 will be entitled to arrears with effect from the date of their retirement.”*

5. Submission of learned counsel for the applicant is that the date of decision of the larger Bench of the Principal Bench of Armed Forces

Tribunal is 01.12.1997 whereas the this Tribunal had decided the O.A. preferred by the applicant on 18.12.2017, as such, the benefit flowing from the decision of the larger Bench (supra) was available to the applicant on the date of decision of this Tribunal and a legal error has crept in the decision of this Tribunal restricting grant of benefit of disability pension with effect from preceding three years from the date of filing of the O.A. It is prayed that the order dated 18.12.2017 passed by this Tribunal may be reviewed and the applicant be granted disability pension from 01.04.1997 since the applicant was discharged from 31.03.1997.

6. We have carefully gone through the pleadings and have given our thoughtful consideration to the entire facts and circumstances of the case. It is trite law that a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength. The decision of this Tribunal is dated 18.12.2017 while the larger Bench decision is dated 01.12.2017. Thus, on the date of decision, the law laid down by the larger Bench had binding effect. Therefore, so far as the present case is concerned, the decision/directions of the larger Bench of Principal Bench, Armed Forces Tribunal, New Delhi delivered in Bunch of Original Applications the leading one being OA.No. 1439 of 2016 *Ex Sergeant Girish Kumar vs. Union of India and others* will prevail.

7. In this view of the matter, we review order dated 18.12.2017 to the extent that the applicant will be entitled for arrears of rounded off disability pension @ 50% for life from 01.04.1997 since admittedly the applicant was discharged from 31.03.1997.

8. Order dated 18.12.2017 passed by co-ordinate Bench of this Tribunal in O.A. No. 680 of 2017 is modified to above extent and now the relevant portion shall be read as under:

*“In the light of the aforesaid judgment, the applicant’s disability pension is rounded off to 50 % for life from 01.04.1997.*

*We dispose of the present O.A. in terms of the above judgment with a direction to the respondents to release the disability pension @ 50% along with arrears within a period of four months from the date of receipt of a certified copy of this order. In case the order is not complied with within the stipulated period, the amount so accrued shall carry interest @ 10% per annum from the due date, till actual payment thereof.”*

9. The respondents shall comply this order within four months from the date of production of a certified copy of this order failing which the applicant shall be entitled to interest @10% per annum from the due date, till actual payment thereof.

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

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

**Dated : 05.09.2018**

**anb**