

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNON**COURT NO. 1****O.A. No. 242 of 2016****Thursday this the 20th day of July 2017.****Hon'ble Mr. Justice D.P.Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)IC-38057Y Col. Bireshwer Kumar (Retd.) Add-86, Jalvayu
Vihar Sector-L, LDA, Aashiana, Lucknow-12**.... Applicant**

Versus

1. Union of India through Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), South Block, New Delhi-110011.
3. Additional Directorate General Personnel Services, AG's Branch, Integrated HQ of Ministry of Defence (Army), DHQ PO New Delhi-110011.
4. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad (UP).

...Respondents**Ld. Counsel appeared****for the Applicant****-Shri Col (Retd) B.P.Singh****Ld. Counsel appeared for the Respondent –****-Shri Shyam Singh****Senior Central Govt. Counsel**

ORDER (Oral)

1. Present petition has been preferred for the relief of rounding off disability pension already granted to him, his case of disability being 20%.
2. The admitted and undisputed facts of the case are that the Applicant was commissioned in the Indian Army on 09.06.1979 and was discharged from the Army on 30.06.2012 on attaining the age of superannuation after completing 33 years of service. At the time of superannuation, the Applicant was in low medical category and as such he was subjected to medical examination by Release Medical Board which assessed the net disability as 20% for life. He was found to be suffering from (i) RADICULOPATHY 20% (2) DIABTES MELLITUS TYPE-II 15% TO 19% AND (III) CAD SILENT MYOCARDIAL ISCHEMIAL (IVD) (OLD) 30%. The first disability was opined to be aggravated by Military service and the remaining two disabilities were opined to be neither attributable to nor aggravated by military service. It is not disputed that the Applicant was sanctioned disability pension at the rate of 20%. It is further stated that the Applicant represented his case for enhancement of disability pension from 50% vide letter dated 20.05.2016 in terms of government policy as contained in Circular dated 31.01.2001 but it elicited no response. Thereafter he again represented the matter to the

Chief of the Army Staff but again it yielded no response. Hence, the Applicant was constrained to invoke the jurisdiction of this Tribunal.

3. The Learned Counsel for the Applicant propped up his case on the ground that the case of the Applicant is a pre-eminently fit case for grant of rounding off of disability pension as at the time of discharge, he was placed in low medical category and his disability was assessed at 20% which in terms of Policy decision as contained in Circular dated 31.01.2001 and the decision of the Apex Court is liable to be enhanced to 50% by way of rounding off.

4. On the other hand, Learned Counsel for the respondents submitted that the benefits of rounding off of disability pension would not be attracted for application as the Applicant was discharged on completion of the period of engagement in the Army and that he was not invalided out of service. It is further submitted that the benefits of enhancement would accrue only to those who stood invalided out of service because their tenure of service was cut short due to invalidment on account of disability or war injury.

5. We have heard Learned Counsel for the parties and perused the records. We have also given our anxious consideration to the law laid down on the point exchanged across the bar.

6. The moot point for consideration in the instant case is whether the Applicant would be entitled to benefits of rounding off of the disability pension despite his being discharged from service on completion of the period of engagement in the Army. It is not disputed that at the time of discharge, the Applicant was in low medical category. In connection with the submission, we feel called to refer to Rule 4 of the Entitlement Rules for Causality Pensionary Awards, 1982. It being relevant, is quoted below:-

"Rule 4- Invaliding from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service."

7. In **Union of India and Ors v Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10th December 2014**) in which Hon'ble the Apex Court nodded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who had completed the tenure of their service in low medical category. 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. It would appear that in the aforesaid case, the Union of India had taken in challenge the various orders of Tribunal

whereby the benefit of rounding off of disability pension was granted to those personnel who had retired on superannuation or on completion of tenure of engagement. The Bunch of appeals culminated in being dismissed and the judgments of the High Court and Armed Forces Tribunal Benches were nodded in approval attended with direction that the dismissal of those appeals will be taken note of by the High Courts as well as by the Armed Forces Tribunal Benches in granting appropriate relief to the pensioners before them. When the peremptory direction of the Apex Court is applied to the present case, it would lead us to the conclusion that the Applicant who was discharged on completion of his tenure in the service, would also be entitled to the benefit of rounding off.

9. As a result of foregoing discussion, we converge to the view that the impugned order passed by the Respondents in refusing the rounding off benefits to the Applicant has to be set aside in view of the dictum laid down by Hon'ble The Apex Court. He shall also be entitled for 9% interest on arrears till the date of payment.

ORDER

10. In the result, the Original Application is allowed and the Applicant is held to be entitled for the benefit of rounding off

and shall be paid the disability pension by extending the benefit of rounding off @ 50% for life. The enhanced disability pension alongwith the arrears is directed to be disbursed to the Applicant from the due date within three months from the date certified copy of this order is served upon the respondents. The Applicant shall be paid interest @ 9% on arrears till the date of payment.

11. There will be no orders as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P.Singh)
Member (J)

Dated : July 20, 2017