

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 45 of 2014

Wednesday this the 20th day of January, 2016

Hon'ble Mr. Justice V.K. DIXIT, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Ashwani Kumar Johari (No. 14237530M Ex NK), aged about 51 years, son of Shri Ramesh Narain Johari, resident of 46, Officers Enclave Vihar, Karmchari Nagar, district-Bareilly (Uttar Pradesh)

..... Applicant

By Legal Practitioner Shri Yash Pal Singh, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Officer-in-charge, Records, Signals, Jabalpur (Madhya Pradesh).
3. Principal Controller of Defence Accounts (Pension), Allahabad.

..... Respondents

By Legal Practitioner Mrs. Deepti Prasad Bajpai, Learned Counsel for the Central Government

ORDER

“Hon’ble Lt Gen Gyan Bhushan, 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) Issuing/passing of an order or direction to the Respondents setting aside the order/letter dated 24.03.2012/09.10.2012 issued by the Records officer on behalf of the Officer-in-charge, Records, Signals, Jabalpur (Annexure No. 1 to the Original Application) vide which the claim of the applicant for providing disability pension giving benefit of rounding off of the disability as per the Government of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 has been rejected, after summoning the relevant original records; and revise the rate of disability pension and grant the same from the due date including arrears thereof with interest.*
- (b) issuing/passing of any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (c) allowing this Application with cost.”*

2. This Original Application has been preferred for relief of rounding off of disability pension already granted to the applicant. The admitted and undisputed fact is that the applicant was enrolled in the Indian Army on 16.07.1980 and was discharged from service with effect from 31.07.1997 under Army Rule 13 (3) Item III (i) read in conjunction with Sub Rule 2A on completion of his terms of engagement in low medical

category. The applicant is in receipt of 20% disability for life which though initially denied in the counter affidavit but subsequently has been confirmed by the respondents also. The delay in filing of Original Application has been condoned vide order dated 14.02.2014.

3. Heard Shri Yash Pal Singh, learned counsel for the applicant, Mr. Deepti Prasad Bajpai, learned counsel for the respondents and perused the record.

4. Learned counsel for the applicant submitted that the applicant has been granted 20% disability pension for life and is already getting the disability pension. However, as per Govt of India, Ministry of Defence, New Delhi letter No.1(2)/97/1/D(Pen-C) dated 31.01.2001, the applicant is authorized rounding off of the disability pension but his claim has been rejected on the ground that benefit of rounding off has been provided to those personnel who have been invalided out of service being medically unfit for further service.

5. Learned counsel for the applicant further submitted that in catena of judgments, Armed Forces Tribunals has given the benefit of rounding off to the personnel who have retired after completion of their terms of engagement in low medical category and were in receipt of disability pension and Hon'ble The Apex Court has nodded in agreement of such relief as such the benefit of rounding off be provided to the applicant, also.

6. **Per contra**, the learned counsel for the respondents has submitted that though in the counter affidavit it has been mentioned that the applicant was granted 20% disability for 05 years but subsequently he has been granted disability pension @ 20% for life vide PPO dated 16.04.2002 and he confirmed that the applicant is in receipt of 20% pension for life. He further submitted that the applicant is not entitled for rounding off of disability pension in terms of Govt of India letter dated 31.01.2001. The rounding off benefit is applicable to personnel who are invalided out of service. Thus benefit of broad banding or rounding off can be given only to those personnel who stood invalided out of service because their tenure of service was shortened either due to disability or war injury. Since the applicant was discharged from service on completion of his terms of engagement as such he is not entitled to rounding off benefits due to policy constraints.

7. The main issue for consideration in the instant case is whether the applicant would be entitled to benefits of rounding off of the disability pension since he has been discharged on completion of his terms and engagement. It is not disputed that he is in receipt of disability pension @ 20% for life. In connection with the submission, we feel called to Para 53 of Pension Regulations for the Army 1961 (Part-1). It being relevant, is quoted below :-

Para 53 of Pension Regulations for the Army 1961 (Part-I)

“53. (1) An officer retired on completion of tenure or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by Military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20% or more, and service element, if the degree of disability is less than 20%. The retiring pension/retiring gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.

(2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of a disease on the date of first removal from duty on account of that disease.”

8. Hon’ble The Apex Court in the case of **K.J.S. Buttar vs Union of India and others reported in SCC 2011, XI, 429** has observed that a person who was discharged by retirement on completion of terms of service with a disability, was held to be ‘invalided out’ and was held entitled to the benefit of ‘broad banding’. Hon’ble The Apex Court in Paras 17 & 18 of the judgment of **K.J.S. Buttar** (supra) has observed as under :-

“17. The respondents submitted that the appellant was not entitled to the above benefits as he had retired on completion of his Short Service Commission of 10 years and had not been invalided out of service.

18. In this connection it may be mentioned that the appellant was invalided out and released in a low medical category with permanent disability assessed at 50% by the Release Medical Board. As per the Defence Services

Regulations/Pension Regulations for the Army 1961 where any officer is found suffering from disability attributable to or aggravated by Military Service he shall be deemed to have been invalided out of service. Relevant provision (page 25 additional documents) read as under :-

53. Officers Compulsorily Retired on Account of Age or on Completion of Tenure.

(1) An officer retired on completion of tenure or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by service medical authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20% or more, and service element, if the degree of disability is less than 20%. The retiring pension/retiring gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.

(2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease.

In our opinion the appellant is entitled to the benefit of the above Regulation.”

9. Hon’ble The Supreme Court in **Review Petition (C) No. 2688 of 2013 in Civil Appeal No. 5591/2006, U.O.I. & ANR vs K.J.S. Buttar** dismissed the Review Petition both on ground of delay as well as on merits on 21.01.2014.

10. In **Union of India and Ors vs Ram Avtar & ors (Civil Appeal No. 418 of 2012 dated 10th December 2014)** in which Hon’ble The Apex Court noded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have been invalided 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.”

11. 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 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 has retired on completion of his terms and engagement, would also be entitled to the benefit of rounding off.

12. In view of the directions given by Hon'ble The Apex Court in the cases of **K.J.S. Buttar vs. Union of India & others** (supra) and **Union of India & others vs. Ram Avtar** (supra), we are of the considered view that in conformity with the Rules, Regulations and the dictum of law laid down by Hon'ble The Apex Court, the applicant is entitled to the benefit of rounding off of disability pension to 50%.

ORDER

13. In the result, the Original Application succeeds and is allowed. The impugned order dated 24.03.2012 (at Annexure No. 1 of Original Application) is set aside. The applicant is 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. In case the respondents fail to pay the amount to the applicant within three months from the date of judgment, they will have to pay interest @ 9% from due date till the date of actual payment.

14. There will be no orders as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice V.K. DIXIT)
Member (J)

Dated : January, 2016
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