

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 264 of 2016**Friday, this the 07th day of Jul 2017**Hon'ble Mr. Justice D.P. Singh, Member (J)****Hon'ble Air Marshal Anil Chopra, Member (A)**

No. 767024-R Ex-SGT Sushanta Kumar Bal son of Sri Dhruvananda Bal, resident of Sector-16-B/264, Vrindavan Yojna Raebareli Road, Lucknow, Uttar Pradesh-226025.

....Applicant

Ld. Counsel for the : **Shri P.K. Shukla, Advocate**
Applicant

Verses

1. The Union of India, through the Secretary, Ministry of Defence (Air Force), New Delhi-110011.
2. The Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi-110011.
3. Director, Dte of Air Veteran, Subroto Park, New Delhi-110010.
4. Office of Joint CDA (Air Force), New Delhi C/o Air Force Central Accounts Ofifce, Subroto Park, New Delhi-110010.
5. PCDA (Pension), Draupadi Ghat, Allahabad.

...Respondents

Ld. Counsel for the : **Shri AK Sahu,**
Respondents Central Govt Standing Counsel.

OIC Legal Cell : **Wg Cdr Sardul Singh,** OIC Legal Cell.

ORDER (Oral)

1. This petition has been preferred under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with denial of rounding off disability pension by the respondents.
2. We have heard Ld. Counsel for the parties and perused the records.
3. The applicant was enrolled in the Indian Air Force on 13.03.1992 as airman. At the time of enrolment the applicant was inducted in Air Force in SHAPE-I medical category having diagnosed no medical ailment. Admittedly the applicant has served in Indian Air Force for 20 years 19 days and thereafter he was discharged on 31.03.2012 with disability to the extent of 20% for life being suffering from Comminuted Fracture Shaft (Rt Femur Optd) Z 0.09 which could not be cured inspite of providing medical assistance to the applicant in the Military Hospital.
4. After discharge the applicant was sanctioned pension which has been paid to him and disability pension has been paid to him only to the extent of 20%. Being aggrieved with non rounding of disability pension the applicant preferred appeal which has been dismissed.
5. The question with regard to rounding of disability pension is no more res integra and has been finally settled by Hon'ble Supreme Court in a catena of judgments. The Hon'ble Supreme Court in the case of ***Dharmvir Singh vs. Union of India & others***, reported in 2013 AIR SCW 4236, has held that in case at entry level, disability is not found in relation to any individual and later on during course of service, he suffers from any disease or disability, it shall amount to have occurred during the course of service on account of army service and it necessarily has to be treated as attributable to and aggravated by

military service and the disability pension has to be granted to such an individual. Relevant portion of the judgment contained in Para 28 is reproduced as under:

“28. A conjoint reading of various provisions, reproduced above, makes it clear that: (i) Disability pension to be granted to an individual who is invalided from service on account of a disability which is attributable to or aggravated by military service in non battle causalty and is assessed at 20% or above, the question whether a disability is attributable or aggravated by military service to be determined under “Entitlement Rules for Casualty Pensionary Awards, 1982” of Appendix-II (Regulation 173). (ii) A member is to be presumed in sound physical and mental condition upon entering if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)]. (iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9). (iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the 4 conditions were due to the circumstances of duty in military service. [Rule 14(c)]. (v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)]. (vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and (vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002 – "Entitlement : General Principles", including paragraph 7, 8 and 9 as referred to above.”

6. Aforesaid proposition of law, as reproduced herein above, has again been followed by the Hon'ble Supreme Court in the case of **Sukhvinder Singh vs. Union of India & Ors.**, reported in (2014) STPL (WEB) 468 SC.

7. Admittedly the applicant, who has suffered disability during the course of Air Force service, is entitled for grant of rounding off of disability pension. The application deserves to be allowed.

8. OIC Legal Cell submits that disability pension may be rounded off and paid with effect from three preceding years from the date of filing of the present O.A. However, in view of decision of their Lordships of the Supreme Court in the case of **Sukhwinder Singh** (supra) we feel that it is not a fit case where period for granting rounded off disability pension may be confined for three years preceding to filing of the O.A.

9. Considering the facts and circumstances of the case we direct the respondents to give the benefit of "rounding off" to the applicant in view of decisions (supra) of the Hon'ble Apex Court. The respondents are further directed to give benefit and pay 50% disability pension in place of 20% w.e.f. 31.03.2012, i.e. the date of discharge of the applicant along with arrears of disability pension expeditiously, say, within a period of three months from today.

10. With the aforesaid direction the present O.A. is **allowed**.

No order to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice Devi Prasad Singh)
Member (J)

Dated: 07 July, 2017

anb