

Court No.1(B)ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**ORIGINAL APPLICATION No. 219 of 2017**Thursday this the 29th day of June, 2017**Hon'ble Mr. Justice D.P. Singh, Member (J)****Hon'ble Air Marshal Anil Chopra, Member (A)**

JC-299934F Sub/Clk (SD) Prem Prakash Chaturvedi (Retd),
 Son of Shri Ram Shankar Chaubey, resident of village-Bhoyar
 Chaubey, Post – Semera (Nagar Bazar), District-Basti, (UP), PIN-
 227302

..... **Applicant**

By Legal Practitioner – Shri R Chandra, learned counsel for the
 applicant.

Versus

1. Union of India, through the Secretary, Ministry of Defence,
Government of India, New Delhi - 110011.
2. Chief of the Army Staff, Integrated Headquarters of
Ministry of Defence (Army), DHQ Post Office New Delhi -
110011.
3. Officer-in-Charge, Army Air Defence Records, PIN–
908803, C/O 56 APO.
4. The Chief Controller of Defence Accounts Draupadi Ghat,
Allahabad (U.P.) - 211014.

..... **Respondents**

By Legal Practitioner – Shri Virendra Singh
 Learned Counsel for the Central Govt.

M.A. No 2698 of 2016

This is an application for condonation of delay in filing the Original Application. Since grant of disability pension is a recurring cause of action, application for condonation of delay is allowed and delay is condoned. Objection raised by learned counsel for the respondents is rejected.

Having heard the learned counsel for the parties, we find that it is a fit case for admission.

Admit.

Let the case be registered as O.A. No. 219 of 2017.

ORDER (ORAL)

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 the relief for rounding off of disability pension from 30% to 50%.
2. Heard the learned counsel for the parties and perused the record and with their consent, we proceed to decide the present application at the admission stage.
3. The undisputed fact of the case, agreed by learned counsel for the parties, is that the applicant was enrolled in the Indian Army on 06.04.1984 and was discharged from service on 01.05.2012 in low medical category after rendering 28 years and 26 days of service. The applicant was granted 30% disability pension for life vide PPO No. DE/012881/2012 (Army) dated 17.10.2012. The applicant approached the respondents for benefit of rounding off of the disability pension which has not been granted to him. Aggrieved, the applicant has filed this Original Application.
4. Learned counsel for the applicant submitted that applicant is in receipt of 30% disability pension for life and as per Govt. of India letter dated 31.01.2001, he is entitled for rounding off of disability pension but it has not been granted to him.

5. **Per contra**, the learned counsel for the respondents has submitted that since the applicant was discharged from the service on fulfilling of his terms and engagement and not invalidated out from service, he is not eligible for the rounding off of disability pension in terms of Government of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001.

6. We feel to recall the judgment of 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** wherein Hon'ble The Apex Court 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.”

7. It is also observed that the Hon’ble 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** has dismissed the Review Petition both on ground of delay as well as on merits on 21.01.2014.

8. On the issue of rounding off of the disability pension, we feel to recall the judgment and order of Hon’ble The Apex Court of **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 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 have retired on attaining the age of superannuation or completion of their tenure of engagement, if found to be suffering from some disability.

9. 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%.

10. The **Original Application No. 219 of 2017** succeeds and is allowed. The applicant is entitled for benefit of rounding off and shall be paid enhanced disability pension by rounding off @ 50% for life from three years prior to filing of the Original Application i.e. 14.12.2013. The respondents are directed to pay the enhanced disability pension alongwith the arrears within 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.

11. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

Dated : June, 2017
RSP/-