

Court No. 1 (List B)**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No.224 of 2017**Friday, this the 30th day of June 2017**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)No. 4161890-P Ex- Hav Kishan,
Son of Late – Nain Singh
Resident of H. No. 592/469 Rajiv Nagar/
Ghoshiana Kharika Ward
Telibagh Lucknow

.....Applicant

Ld. Counsel for : **Shri Parijaat Belaura, Advocate.**
the Applicant

Versus

1. Union of India, through the Secretary,
Ministry of Defence,
New Delhi-110001.
2. The Chief of Army Staff,
Integrated Headquarters,
Ministry of Defence, South Block,
New Delhi – 110011.
3. The Principal Controller of Defence Accounts (Pension) Draupadi
Ghat, Allahabad (UP).
4. Officer-in-Charge, The Kumaon Regiment, PIN No-990473, C/O 56
APO.

.....Respondents

Ld. Counsel for the : **Dr Shesh Narain Pandey,**
Respondents **Ld. Counsel for Central Govt.**

M.A. No 826 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. 224 of 2017.

ORDER (Oral)

1. The present Original Application has been filed by the applicant for rounding off of the disability pension sanctioned by the respondents and is being paid to the @ 30% for life.
2. The question with regard to the payment of disability pension and rounding off thereof is no more *res integra*.
3. 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 invalidated 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.”

4. 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.

5. 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.

6. 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% for life.

7. In view of above, we fail to understand as to why the respondents do not take action at their own, in view of the settled proposition of law (supra) for rounding off of disability pension which has already been

sanctioned by them. It is unfortunate on the part of the respondents to compel a retired Army Personnel to approach the Tribunal only for rounding off of the disability pension, which should be done by the respondents themselves, more so when the applicant has submitted a representation for the purpose, we deprecate such situation.

8. Moreover, we have been informed that a circular has been issued by the Government of India dated 18th April 2016, in such a situation, we do not propose to keep the matter pending for few more months inviting counter and rejoinder affidavits in the teeth of pleadings on record when the PPO has already been issued. While rounding off of disability pension from 30% to 50% for life, it shall be open to the respondents to look into the records and genuineness of prayer made by the applicant, but in any case such exercise should be done instead of prolonging the matter.

9. Our attention has also been invited to the circular dated 10.06.2016, where the office of the PCDA (P), Allahabad, while admitting the rounding off of the disability pension, held that the rounding off shall be done only who obtains orders from the Court. Such action seems to be contemptuous and circular has been issued in contravention of the judgment of the Hon'ble Apex Court. Circular No.561 dated 10.06.2016 is reproduced below :

“REGISTERED

Circular No. 561

Dated: 10.06.2016

To,

The 01/ C,
Records PAO (ORs)

Subject: Broad banding of disability element in respect of Armed Forces Personnel retired/ discharged on completion of terms of engagement with disability aggravated by or attributable to Military Service- Implementation of Court/ AFTs orders.

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Consequent upon issue of GOI, MOD letter No. F. No. 3(11)2010-D(Pen/Legai) Pt-V dated 18th April 2016 (copy enclosed), approval of competent authority has been conveyed for implementation of Court/ AFTs orders for granting broad banding benefits of disability element to an Armed Forces Personnel retired or discharged on

completion of terms of engagement with disability aggravated by or attributable to Military Service (other than invalided out from service) from the date mentioned in respective Court Orders.

2. In view of the above, all affected cases covered under above order may be reviewed and claims may be forwarded to respective Pension Sanctioning Authorities alongwith Sheet Roll and other connected documents.

3. This circular has been uploaded on this office website www.pcdapension.nic.in for dissemination of all concerned.

No. Gts/Tech/05/LXXVI

Dated: 10.06.2016

Sd/-
(Nasim Ullah)
Asst. Controller (Pensions)

Copy to:

1. The Dy. Secretary, Govt. of India, Ministry of PPG & P(Deptt. of P&PW), Lok Nayak Bhawan, New Delhi.
2. Director (Pensions), Govt. of India, Ministry of Defence D (Pen/Sers), Sena Bhawan, Wing 'A' New Delhi.
3. Army HQrs AG's Branch, PS-4(b) DHQ, PO New Delhi- 110011.
4. AHQ GS Branch, TA Directorate, DHQ PO New Delhi- 110011.
5. Naval HQrs, PP & A, DHQ PO New Delhi.
6. DPA, Vayu Bhawan, New Delhi- 11.
7. Air HQrs Ad PP & p. 3, West Block-VI, R. K. Puram, New Delhi- 110066.
8. Sr. Dy. CGDA (AT-II), 010 the CGDA, Ulan Batar Road, Palam Delhi Cantt- 110010.
9. PCDA (Navy) No.-1, Cooperage Road, Mumbai- 400039.
10. PCDA (WC), Chandimandir, Chandigarh
11. CDA (AF), West Block-V, R. K. Puram, New Delhi-110066.
12. CDA, Chennai
13. CDA (PO), Meerut
14. JCDA (AF) Subroto Park, New Delhi- 110010.
15. Director of Audit, Defence Service, New Delhi
16. All Record Offices/Regiment! Corps.
17. Naval Pension Office, C/o INS Tanaji, Sion Trombay Road, Mankhurd, Mumbai- 400088.
18. Air Force Record, Dhaula Kunwa, Delhi Cant!.
19. Director MP8(1 of R)Integrated HQ of MOD(Army)AG's Branch, Addl Dte Gen of MP/MP8(1 of R) West Block-III, RK Puram, N-Delhi 110066
20. All Add I CsDA/ Jt. CsDA in Main Office.
21. All GOs in Main Office.
22. The 01/C, G-1(M), AT (ORs)-Tech. & G-1/Civil (Tech.)
23. All SAOs/AOs/AAOs in Gts/ORs Complex.
24. The 01/C, EDP Manual Service Section.
25. The 01/C, EDP Centre.
26. The 01/C, PHP Cell EDP Centre
27. All Sections in Main Office.
28. The 0 IC, G-2 Section
29. The 0 1/C, G-3 Section
30. The 0 1/C, G-4 Section
31. The 0 1/C 0 & M Cell
32. The 0 1/C Complaint Cell
33. The 0 1/C, EDP Centre (Website) for uploading the circular on the office website.
34. Defence Pension Liaison Cell.
35. The 0 1/C Reception.
36. The 0 1/C, DPTI.
37. Spare

Sd/-

(P.K.Srivastava)

Sr. Accounts Officer (Pensions)”

10. The **Original Application No. 224 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 O.A. i.e. 13.04.2013. 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)

Dated: 30th June, 2017

RSP/

(Justice D.P. Singh)

Member (J)