

ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1 (List B)

.O.A. No. 170 of 2016 with M.A. No. 417 & 713 of 2017

Col MD Aftab Alam (Retd)

Applicant

By Legal Practitioner for Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>02.05.2017</u> <u>Hon'ble Mr. Justice D.P. Singh, Member (J)</u> <u>Hon'ble Lt Gen Gyan Bhushan, Member (A)</u></p> <p>Present: Shri V.P. Pandey, learned counsel for the applicant and Shri A.N. Tripathi, learned counsel for the respondents.</p> <p><u>M.A. No. 417 of 2017</u></p> <p>Short counter affidavit filed by learned counsel for the respondents is taken on record. M.A. aforesaid is disposed of accordingly.</p> <p><u>M.A. No. 713 of 2017</u></p> <p>Rejoinder affidavit filed by learned counsel for the applicant is taken on record. M.A. aforesaid is disposed of accordingly.</p> <p style="text-align: center;"><u>ORDER (ORAL)</u></p> <p>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 40% to 50% for life.</p> <p>2. Heard Shri V.P. Pandey, learned counsel for the applicant, Shri A.N. Tripathi, learned counsel for the respondents assisted by OIC Legal Cell and perused the record.</p> <p>3. The applicant is in receipt of disability pension and he has filed this Original Application No. 170 of 2016 for the relief of rounding off of the disability pension. Undisputed facts of the case, as agreed by both learned counsel for the parties, is that the applicant was commissioned in the Indian Army on 17.12.1983 and retired from service on 31.12.2015 (afternoon) in low medical category after rendering over 32 years of service. The applicant is in receipt of 40% (Composite) disability pension for life. The applicant approached the</p>

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respondents for benefit of rounding off of 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 the applicant is in receipt of 40% (Composite) disability pension for life as per Corr. PPO No. M/Corr/6230/2016. 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 entitled for rounding off of the disability pension but it has not been granted to him. Learned counsel for the applicant submitted that in catena of judgments, various Benches of Armed Forces Tribunals have given the benefit of rounding off to the personnel who have retired after completion of their terms of engagement in low medical category.

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 invalidated out of service.*

18. *In this connection it may be mentioned that the appellant was invalidated 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 invalidated 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

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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. 170 of 2016** succeeds and is allowed. The applicant is entitled for benefit of rounding off and shall be paid enhanced disability pension by rounding off from 40% to 50% for life from the date of retirement from service i.e. 01.01.2016. 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.



(Lt Gen Gyan Bhushan)
Member (A)



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