

Form No. 4

[See rule 11(1)]

ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 1 (List B)

O.A.No.329 of 2015

With MA No.572 of 2017

Lt Col (Retd) Ram Raj Singh

By Legal Practitioner for Applicant


Applicant

Versus

Union of India & Others

By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>04.05.2017</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: Col (Retd) YR Sharma, learned counsel for the applicant and Shri Rajiv Pandey, learned counsel for the respondents.</p> <p>Cost deposited by the respondents on 17.09.2016 shall be released in favour of applicant by the Registry through cheque. Accordingly, we clarify the orders.</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 30% to 50% for life.</p> <p>2. The applicant is in receipt of disability pension and he has filed this Original Application for the relief of rounding off of the disability pension. Undisputed fact of the case, as agreed by learned counsel for the parties, is that the applicant was commissioned in the Indian Army on 15.06.1969 and on 03.02.1995, he was placed in permanent low medical category. Later on he retired from service on 31.08.2000 with 30% disability for life. However, he was not granted disability pension since his disability was considered as neither attributable to nor aggravated by Military service.</p> <p>3. Feeling aggrieved by the denial of the disability pension, the applicant preferred Writ Petition No. 783(SB) of 2009 before the High Court, Lucknow Bench, Lucknow to pay 50% disability pension from date of superannuation. Writ Petition was transferred to this Tribunal under Section 34 of AFT Act, 2007 and renumbered as T.A. No.33 of 2010 which has been allowed vide order 11th August 2011. The operative portion of the</p> <p style="text-align: right;"></p>

order of the Tribunal is reproduced as under :

“11. In our opinion, the applicant was entitled to the benefit of Rule 9 of the Entitlement Rules and in the circumstances, we allow the petition, set aside the orders of the PCDA dated 14.08.2001 rejecting the claim of the applicant, as also the order of the First Appellate Committee dated 24.07.2003 (Annexure-3) and the order of the Second Appellate Committee dated 4/10.12.2007 and direct the respondents to calculate and pay the disability pension of the applicant at 30% disability from the date 08.10.2007, the date when the Medical Board in the appeal assessed the disability at 30%.”

4. In pursuance to the aforesaid order, the applicant has been paid disability pension @30% for life. However, applicant submitted a representation on 12.11.2014 before the respondents for rounding off of disability pension, but the same is still pending. Aggrieved, the applicant has filed this Original Application.

5. Heard Col (Retd) YR Sharma, learned counsel for the applicant and Shri Rajiv Pandey, learned counsel for the respondents alongwith Maj Piyush Thakran, OIC, Legal Cell and perused the record.

6. The applicant submitted that he 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.

7. **Per contra**, the learned counsel for the respondents has submitted that in pursuance of judgment and order of this Tribunal dated 11.08.2011 passed in T.A. No. 33 of 2010, the applicant is in receipt of 30% disability pension for life as per PPO dated 25.09.2013. Since the applicant retired 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 the disability pension in terms of Government of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001.

8. 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

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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 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. 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.

10. On the issue of rounding off of the disability pension, we feel to recall the judgment and order of Hon'ble The Apex Court in the case 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.

11. 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%.

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12. The Original Application No. O.A.No.329 of 2015 succeeds and is allowed. The applicant is entitled for benefit of rounding off and shall be paid enhanced disability pension by rounding off from 30% to 50% for life from the date of retirement i.e. 31.08.2000. 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.

13. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

PKG

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

Before signing the order, we feel that the controversy in question requires rehearing, since the attention of the Tribunal was not drawn to certain material facts, including the earlier judgment.

List for this case on 26.05.2017 for rehearing.

(Lt Gen Gyan Bhushan)
Member (A)

PKG

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