

Form No. 4

[See rule 11(1)]

ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 1 (List B)

O.A. No. 330 of 2015 with M.A. No. 573 of 2017

Lt Col PS Tripathi(Retd)

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>05.05.2017 <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 YR Sharma(Retd), learned counsel for the applicant and Shri Rajiv Pandey, learned counsel for the respondents.</p> <p>So far as the cost is concerned, let the cost Rs. 10,000/-already deposited by the respondents be paid to the applicant through Cheque by the Registry. The order dated 27.07.2016 stands modified accordingly.</p> <p style="text-align: center;"><u>ORDER (Oral)</u></p> <ol style="list-style-type: none">1. Heard learned counsel for the parties and perused the records.2. 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 20% to 50% for life.3. Coming to the merits of the case, admittedly, the applicant was commissioned in the Corps of Signals on 31.03.1972 and was superannuated from service on 31.07.2002 after completion of 30 years of service. The applicant was granted 20% disability for life wef 01.08.2002 by the Army Headquarters letter dated 03.07.2003. Thereafter, applicant submitted a representation on 18.09.2012 to PCDA(P), Allahabad for broad banding of pension from 20% to 50% in terms of Government of India, Ministry of Defence letter No 1(2)/97/1/D(Pen-C) dated 31 January 2001. The applicant has been denied the broad banding of pension by the respondents. As per learned counsel for the applicant, another representation has been submitted before the respondent No. 3 on 03.11.2014 for the purpose of broad banding but the learned counsel for the respondents has denied receipt of such representation.4. <i>Per contra</i>, the learned counsel for the respondents has submitted that the applicant is in receipt of 20% disability pension for life w.e.f. 01.08.2002 as per PPO dated 28.08.2003. Since the applicant was <p style="text-align: right;"></p>

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.

5. 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."

6. 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.

7. 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.

8. 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%.

9. The Original Application No. 330 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 20% to 50% for life from the date of superannuation i.e. 31.07.2002. 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.

10. No order as to costs



(Lt Gen Gyan Bhushan)

Member (A)

RPM/-



(Justice D.P. Singh)

Member (J)