

Court No.1(B)
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 337 of 2015

Monday this the 10th day of April, 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Ex Sgt. Rajendra Prasad, Son of Late J.N. Lal
Resident of house No. 55D, Chak Mundera
Post Office – Begam Sarai
District Allahabad – 211001 (U.P.)

..... Applicant

By Legal Practitioner - Shri A.K. Singh, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence,
New Delhi.
2. The Chief of the Air Staff, Air Headquarters (Vayu Bhawan)
Rafi Marg, New Delhi.
3. Air Force Record Office Subrato Park, New Delhi – 10.
4. Dy. C.D.A. (AF), Subrato Park, New Delhi – 10.
5. AIR. HQ. Directorate of Veterans, Subrato Park,
New Delhi- 10.

..... Respondents

By Legal Practitioner - Dr. Shailendra Sharma Atal
Learned Counsel for the Central Govt.





ORDER

“Hon’ble Lt Gen Gyan Bhushan, Member (A)”

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 20% to 50%.
2. The applicant is in receipt of disability pension and he has filed this Original Application No. 337 of 2015 for the relief of rounding off of the disability pension. Undisputed facts of the case, agreed by both learned counsel for the parties, is that the applicant was enrolled in the Indian Air Force on 29.08.1963 and was discharged from service on 31.08.1995 (afternoon) on fulfilling the terms and conditions of the service in low medical category after rendering approx 32 years of service. The medical board assessed his disability @ 20% for five years from the date of discharge vide PPO dated 15.10.1998 which was further extended for a period of another five years i.e. upto 27.10.2004 vide PPO dated 09.08.2000 and subsequent reassessment of medical disability was assessed as 20% for life and accordingly PPO No. 08/14/B/508/2003 has been issued. The applicant approached the respondents for benefit of rounding off of disability pension which has not been granted to him. Aggrieved, the applicant has filed this Original Application. The delay in filing of Original Application has been condoned vide order dated 07.12.2015.
3. Heard Shri A.K. Singh, learned counsel for the applicant, Dr. Shailendra Sharma Atal, learned counsel for the respondents and perused the record.
4. Learned counsel for the applicant submitted that the applicant has been granted 20% disability pension for five years from date of discharge which was further extended for a period of another five years i.e. upto 27.10.2004. On last review of his disability by Re-Survey Medical Board, disability was assessed as 20% for life and


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accordingly he is in receipt of 20% disability pension as per PPO No. 08/14/B/508/2003. 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 further 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 and Hon'ble The Apex Court has nodded in agreement of such relief.

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. Buttara 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. Buttara** (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*


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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.”

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. 337 of 2015** succeeds and is allowed. The impugned order dated 19.11.2014 passed by the respondents is set aside. The applicant is entitled for benefit of rounding off and shall be paid disability pension by extending the benefit of rounding off @ 50% for life from three years prior to filing

of the Original Application i.e. 16.11.2015. 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.


10.4.17
(Lt Gen Gyan Bhushan)
Member (A)


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

Dated: 10th April, 2017
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