

COURT NO. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****O.A. No. 07 of 2018****Wednesday, this the 03rd day of January, 2018****"Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)"**

No. JC- 158380K Ex Sub, Mishri Singh, Son of Sri Mokhi Singh, Resident of House No. 260, Senani Vihar, Rai Bareilly, Road, Lucknow. -----**Applicant**

**Ld. Counsel appeared - Ms. Kavita Singh, Advocate
for the applicant**

Versus

1. The Union of India, through the Secretary, Ministry of Defence (Army), New Delhi - 110011.
2. The Chief of the Army Staff, IHQ of Mod (Army), Army HQ, South Block, New Delhi - 110011.
3. Officer-In-Charge Records, Rajput Regimental Centre, Fatehgarh Centre (U.P.) - 209601.
4. Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad.

----Respondents**Ld. Counsel appeared - Dr. Shailendra Sharma Atal,
for the Respondents Advocate, Sr. Central Govt.
Standing Counsel****Assisted by - Maj Salen Xaxa, OIC Legal
Cell**

ORDER (Oral)

1. The present O.A. has been preferred under section 14 of the Armed Forces Tribunal Act, 2007 for the reliefs which are quoted below.

“1. To issue/pass an order to set aside/quash the rejection of rounding off disability pension vide letter dated 12.07.2017 and 07.07.2017.

2. To issue/pass an order or directions to the respondents to rounding off disability pension of the Applicant @30% to 50% alongwith 0% interest of the arrear from the date of discharge.”

2. Draped in brevity, the facts of the case are that the Applicant was enrolled in the Indian Army on 09.05.1974 and was discharged after rendering 26 years, 8 months and 22 days of service on 31.01.2001 under Army Rule 13(3) (I) (iii) (a) in low medical category on account of suffering from “Bilateral Sensori Neural Deafness-389”. Before discharge, he was brought before Release Medical Board on 02.11.2000 which assessed his disability as 20% for five years but the claim of disability pension was rejected citing that the disability was neither attributable to nor aggravated by military service. Being aggrieved by rejection of his claim for disability pension, the Applicant

preferred O.A No 430 of 2012 which culminated in being allowed vide order dated 15.05.2014 whereby the Applicant was held entitled to disability pension @ 20% for five years from the date of discharge attended with direction to produce the Applicant before Review Medical Board for re-assessing his medical condition. The Applicant was examined by the Review Medical Board which assessed his disability as 30% for five years and consequently, he was granted disability element of disability pension from 09.03.2016 to 08.03.2021 vide PPO dated 13.06.2016. The Applicant then preferred a representation with the sole prayer to rounding off of disability element of disability pension citing decisions of the Apex Court but the same was returned without acceding to the prayer for rounding off. Thereafter, the Applicant preferred an appeal on 18.10.2016 but the same elicited no response. Thereafter a legal notice dated 10.06.2017 was served but again the prayer for rounding off was not granted and the same was declined vide order contained in letters dated 02.07.2017 and 12.07.2017. It is in the above backdrop that the present O.A has been preferred.

4. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also gone through the material facts on record.

5. Learned counsel for the respondents raised objection on the count that the O.A has been filed after considerable delay. The controversy being one pertaining to grant of disability pension and consequent rounding off of disability element of disability pension, and the same being recurring cause of action, in our view, the objection of the learned counsel for the respondents cannot be sustained. Accordingly delay in filing the O.A is condoned.

6. Learned counsel for the parties agreed to decide the O.A at the very threshold. Thus we proceed to decide the O.A at the admission stage itself.

7. As stated supra, the only relief claimed is that of rounding off of disability element of disability pension. It brooks no dispute that in the medical examination conducted by Review Medical Board, the disability of the Applicant has been assessed as 30% for five years and as a consequence of which PPO dated 13.06.2016 was issued granting disability element of disability pension upto 08.03.2021. It is also not in dispute that the applicant thereafter preferred a representation and then an appeal which culminated in being rejected.

8. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***,

reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, **U.O.I. & Anr vs. K.J.S. Buttar** and **Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. In the light of the above decision, we are of the view that the disability assessed as 30% for five years should be rounded off to 50% for five years in view of ex cathedra decision of the Apex Court as also various decisions of the Armed Forces Tribunal all over India.

9. At this stage, the Learned Counsel also called in question the payment of arrears from the date of discharge submitting that it should be restricted to three years prior to filing of the Original Application and in this connection, referred to the decision of Hon'ble the Apex Court in **Shiv Das v Union of India and Ors** reported in **(2008) 2 PLR 573**. In view of settled position in law, we have no reason to disagree with the submission of the learned counsel. In the instant case, the applicant filed the O.A on 06.04.2016. In view of settled position in law in the case of Shiv Das (supra), the applicant shall be entitled to disability pension with effect from 01.08.2014.

10. In view of the above, the O.A is allowed to the extent that the disability of the Applicant which was assessed as 30% for life would stand rounded off to 50% for five years. However, payment of arrears is restricted to three years

prior to filing of the Original Application in view of decision of the Apex Court in **Shiv Das v Union of India and Ors** reported in **(2008) 2 PLR 573**. The respondents are further directed to give effect to this order within a period of 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 @ 10% on the amount accrued from due date till the date of actual payment.

11. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated : January, 03 ,2018

BLY/-