

RESERVED

COURT NO.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 282 of 2016

Tuesday, this the 16th day of January, 2018

"Hon'ble Mr. Justice D.P. Singh, Member (J)

"Hon'ble Air Marshal BBP, Sinha, Member (A)"

Ex Gdsm Varun Kumar Pandey (13688551H) S/o Late Sri
Ram Achal Pandey. (r/o Village Nagwasi, Post Dugawali,
Dist: Mirzapur). **Applicant**

Ld. Counsel for the : **Shri A.K. Srivastava, Advocate**
Applicant

Versus

1. Union of India, Through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block.
3. OC Records, Brigade of the Guards, Panchmari.
4. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad

----- **Respondents**

Ld. Counsel for the: **Dr. Shailendra Sharma Atal,**
 Respondents. Sr. Central Government
 Standing Counsel

Assisted by : Maj Salen Xaxa, OIC Legal Cell.

ORDER

“ Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. The Present Application under section 14 of the Armed Forces Tribunal Act, 2007 has been preferred for the following reliefs.

“(a) Issue/Pass an order or direction of appropriate nature to the respondents to grant and sanction War Injury Element and treat the applicant as a Battle Casualty w.e.f. his date of Discharge from service 05 Dec 1992 in terms of Para 10 of MoD dated 31 Jan 2001 duly supported by decisions of Apex Court after quashing its denial/rejection vide Records Brigade of The Guards Letter dated 02 Aug 2016 and 26 Aug 2016(Annexure No. A-2 and A-3) including MoD Letter Dated 23 Dec 2014 referred therein.

(b) Issue/Pass an order or direction of appropriate nature to the respondents to carry out the “rounding-off” of his 20% disability pension to 50% in respect of the applicant w.e.f. 01 Jan 1996 as provided vide Government of India, Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 31 Jan 2001 supported by the position held by the Supreme Court after quashing its denial / rejection vide records Brigade of The Guards

Letter dated 02 Aug 2016 and 26 Aug 2016 (Annexure No. A-2 and A-3) including MoD Letter Dated 23 Dec 2014 referred therein.

(c) Issue/Pass any other order or direction to issue a fresh PPO or Corrigendum PPO granting disability Pension including its constituent of Disability Element and Service Element w.e.f. 05 Dec 1992, rounding off disability pension to 50 w.e.f. 01 Jan 1996 and War Injury Element and Battle Casualty Pension w.e.f. 05 Dec 1992.

(d) Issue/Pass an order or direction to the respondent to pay interest @ 18% for dues which have not been paid for intervening period from 05 Dec 1994 to 20 Apr 2012.

(e) Issue/Pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(f) Allow this application with costs."

2. The facts shorn of unnecessary details are that the Applicant was enrolled in the Indian Army on 17.10.1986 and was discharged from service on 05.12.1992 on his own request under item 13 (13) III (iv) of Army Rule 1954. The total service rendered by the Applicant was six years and 49 days. Before

discharge, he was brought before Release Medical Board held at Military Hospital Bareilly on 03.11.1992 which assessed his disability as 20% for two years and at the same time opined the disability as aggravated by military service. The claim for disability pension preferred by the Applicant was rejected solely on the ground that since he had sought premature retirement on his own request, he was not entitled to any award on account of disability. Aggrieved by the rejection of his claim, the Applicant preferred a writ petition bearing No 40804 of 2003 in the High Court at Allahabad for grant of disability pension. After establishment of Armed Forces Tribunal, the said writ petition stood transferred to this Tribunal and renumbered as T.A no 1221 of 2010. The aforesaid writ petition came to be decided vide order dated 12.12.2011 whereby the T.A was allowed in part and the applicant was allowed disability pension assessed as 20% for a period of two years with effect from 28.10.1992. It was further directed that the Applicant shall be brought before Review Medical Board within three months and in

case the disability is still found to be persisting, the disability pension shall be allowed as determined from the date of the Review Medical Board. Since the Applicant was still in service on 28.10.1992, a review application was filed before the Armed Forces Tribunal. In terms of Review Application, the judgment of the Tribunal was corrected as 05.12.1992 in place of 28.10.1992. In terms of the earlier judgment of the Armed Forces Tribunal, the Review Medical Board was held on 20.04.2012 at Military Hospital Delhi Cantt. In terms of the corrected order of the Tribunal, the PCDA (P) Allahabad granted disability element to the Applicant vide PPO dated 09.01.2015. Thereafter, the Applicant served a legal notice for grant of rounding off of disability benefits with effect from 01.01.1996, service element and war injury element with effect from 05.12.1992. It is in the above perspective that the present O.A has been filed in which a new prayer has been introduced for grant of war injury element with effect from 05.12.1992.

3. In this case, there was cleavage in the opinion on the point whether the applicant should be granted battle casualty pension or not, my learned brother leaned in favour of grant of battle casualty pension in the facts and circumstances of the case while my view was that the applicant was not entitled to any battle casualty pension as it was in this O.A that for the first time he had introduced the prayer for grant of battle casualty pension which in my view was introduced as an afterthought as nothing on record pointed to an iota of evidence which would vouch for the fact that the disability that the applicant suffered was on account of injury suffered in battle while posted at Siachin Glacier. Both of us were in agreement that the applicant was entitled to rounding off of disability suffered by him.

4. First of all, I would refer to the T.A. No 1221 of 2010, which the Applicant had filed in this Tribunal. In the said T.A, the applicant had initially invoked the jurisdiction of the High Court at Allahabad for the relief of grant of disability pension only and there was no mention of war injury pension. The aforesaid writ

petition as stated supra, stood transferred to this Tribunal and renumbered as T.A. The aforesaid T.A culminated in judgment dated 12.12.2011. The T.A was allowed and the operative portion of the order being relevant is quoted below.

"10. In the circumstances, the Transferred Application is allowed in part. The applicant shall be allowed disability pension assessed as 20 percentage for a period of two years with effect from the date when it was found i.e. 5th December 1992 the date on which the Review Medical Board was carried out.

11. It is further directed that the applicant shall appear before the Review Medical Board within period of three months from today and in case the disability is still found to be persisting, the disability pension shall be allowed as determined from the date of the Review Medical Board."

5. In so far as prayer in the T.A is concerned, the para 1 of the said judgment being relevant is quoted below.

"By means of a petition (W.P. No 408904 of 2003) the applicant approached the Hon'ble High Court at Allahabad praying therein for a direction to be issued to the respondents to allow him the disability pension. Upon the Tribunal having been constituted

under Armed Forces Tribunal Act, 2007 the said petition was transferred in exercise of powers conferred under section 34 of the said act. As such the matter is before us for adjudication."

6. It would thus transpire that the grievance of the Applicant was confined to grant of disability pension in the writ petition/T.A aforesaid.

7. I would also like to refer to the Application made by the Applicant on 26.02.1991 in which he prayed for being discharged from service on account of domestic problems related to looking after his agricultural land and other domestic issues, inability of his aged parents to cope up without support of his brothers and decision of his brothers to leave parents and settle elsewhere with their families. It may be noted that in this application, there is not an iota of whisper that he was pestered by any ailment or injury or he was suffering from any disability of any kind. The Application dated 26.02.1991 being relevant is quoted below for ready reference.

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8. In this connection I feel called to refer to the part 1 of the Release Medical Board (RMB) duly signed by the applicant. Part 1 in RMB is the signed personal medical statement/information, as given by the soldier at the time of his discharge. In this statement the applicant has informed that his low back ache started for the first time in October 1991 at Bareilly and has signed the same. This signed statement of applicant is in gross contrast to his claim in OA para 2 that he sustained injury in his

backbone by a sliding iceberg on 01 January 1990 at SIACHEN GLACIER. Additionally the opinion of RMB on his backache (page 14 of counter) clearly indicates that there is no abnormality in his X-ray and that there is no neurological deficit, thereby implying that there is no evidence of any injury to his spine. The opinion of the Board being relevant is quoted below for ready reference.

"An old case of Low Backache in low med cat CEE (P) Now reported for RMB. At present he complains of pain over lower back radiating towards right leg.

Spine- No deformity. No tenderness, Paraspinal muscle spasms present

SLR- Rt 45o

Lt 60o

No neurological deficit. X-ray lumber spine- NAD"

9. In the present O.A the applicant has emphasised the fact over and again that he was invalidated out which is belied from the facts and evidence on record. As referred to above, the applicant had applied for discharge on his own request on account of some domestic problem vide application dated 26.02.1991. The said application was acted upon

culminating in his discharge vide order dated 12.12.1992. Before discharge, the applicant was brought before Release Medical Board which assessed his disability as 20% for two years. The fact however remains that the Applicant was not brought before Invalidating Medical Board but was brought before Release Medical Board. Thus, in view of the Application made by the Applicant for discharge on 26.02.1991 and also the fact that before discharge, he was brought before the Release Medical Board which recommended his discharge, amply go to show that the Applicant was discharged on his own request and was not invalidated out on account of any injury suffered by him.

10. In the earlier T.A no doubt, the plea taken was that the disability which was noticed by the Release Medical Board in the back of the applicant was one which the applicant had suffered 01.01.1990 while posted in Siachin Glacier while participating in operation MeghDoot. The injury is attributed to have suffered by the Applicant on account of sliding Iceberg but no such plea finds mention in his

application dated 26.02.1991 which the Applicant had made for discharge from service on his on request citing some domestic problem. In the said application, there is no reference to any injury which was pestering him.

11. The question that crops up for consideration in the instant case why the applicant missed mentioning the prayer for grant of battle casualty pension in his earlier petition before the High Court which stood transferred to this Tribunal.

12. In the O.A the Applicant claims to have suffered injury while returning from Siachin Glacier. The injury was said to have suffered by him on 01.01.1990 while participating in Operation Meghdoot. There is no mention nor is there any evidence brought on record to show that the Applicant was examined or treated for the injury suffered by him during operation Meghdoot. Additionally all activities in Siachin are group activities therefore a sliding iceberg targeting only one soldier in a group and leaving the rest and even this one soldier doesn't require any treatment despite an injury of a nature requiring

declaration as a Battle casualty, is a very difficult proposition to believe, specially in light of the fact that the respondents are emphatically stating in counter that the applicant is blatantly lying and misleading the tribunal and that he has never ever received any kind of injury at SIACHEN. The only paper brought on record is the report of Release Medical Board in which the back pain was said to be an old case of low backache. Again there is no mention in the aforesaid medical report of any injury suffered by the Applicant while participating in operation **Meghdoot at SIACHEN**. On the contrary the applicant has given signed statements in the medical board which indicate that his claims of injury at SIACHEN are false. In the circumstances, the claim of the Applicant that he had suffered the said injury during operation **Meghdoot** does not commend to me for acceptance.

13. I would also like to mention that there is a way to declare a battle casualty injury. In case any soldier suffers any injury during operation, a court of inquiry is held and it is thereafter that the matter is referred

as battle casualty injury. In the instant case, no such procedure appears to have been followed. No court of inquiry is said to have been held. There is no mention at any place that the applicant suffered any injury during operation due to sliding of iceberg and that he was brought back to the Unit and was treated. No papers pertaining to the treatment of the applicant has been produced or brought on record for perusal of the Bench. On the other hand the respondents are very clear that the claims of applicant for war injury pension are false and motivated.

14. Learned counsel for the Applicant has referred to Special Army Order 8/S/85. We have gone through this SAO and find that the Heading „Definitions“ covers Paras 2 to 10. The relevant Paras 2 to 8 are reproduced as under :

Definitions

"2. For the purpose of these instructions, definitions of various terms used herein will be as in the succeeding paragraphs.

3. Physical Casualties – Physical Casualties are those which occur in non Operational areas or in operational areas where there is no fighting, or whilst in aid to civil power to maintain internal security. Such casualties fall in to the following categories:- (a) Died or killed. (b)

Seriously or dangerously ill. (c) Wounded or injured (including self-inflicted) (d) Missing.

4. Battle Casualties- Battle Casualties are those sustained in action against enemy forces or whilst repelling enemy air attacks. Casualties of this type consist of the following categories :-

- (a) Killed in action.*
- (b) Died of wounds or injuries (other than self-inflicted).*
- (c) Wounded or injured (other than self-inflicted).*
- (d) Missing.*

NOTES :

(i) Air raid casualties are those sustained as a direct or indirect result of enemy air raids. These will be treated as Battle Casualties.

(ii) Casualties in fighting against armed hostiles and those whilst in aid of civil power to maintain internal security are classified as „physical“ for statistical purposes, but are treated as battle casualties for financial benefits.

(iii) Casualties due to encounter with troops or armed personnel or border police of a foreign country, or during fighting in service with peace-keeping missions abroad under Government orders, will be classified as battle casualty.

(i) Accidental injuries and deaths which occur in action in an operational area will be treated as battle casualties.

(ii) Accidental injuries which are not sustained in action and not in proximity to the enemy, if these have been caused by fixed apparatus (eg, land mines, booby traps, barbed wire or any other obstacle) laid as defences against the enemy, as distinct

from those employed for training purposes and if the personnel killed, wounded or injured were on duty and are not to blame will be classified as battle casualties, notwithstanding the place or occurrence or agency laying those, viz. Own troops or enemy ;

provided the casualties occur within the time limits laid down by the government.

(iii) Saboteurs, even of own country, will be treated as enemy for the purpose of classifying their actions as enemy action, and encounters against them as encounters against the enemy. (iv) All casualties during peace time as a result of fighting in war like operations, or border skirmishes with a neighbouring country, will be classified as battle casualties.

(v) Accidental deaths/injuries sustained due to natural calamities (such as floods, avalanches, landslides and cyclones) or drowning in river crossing at the time of performance of operational duties/movements whilst in action against enemy forces will be treated as battle casualties.

(vi) Reports regarding personnel wounded or injured in action will specify the nature of the wound or injury and will also state whether the personnel remained on duty.

(vii) Reports on personnel missing in action will indicate, if possible, their likely

fate, eg, „believed liked“, “believed prisoner of war „ or „believed drowned“.

(viii) Casualties occurring while operating on the international border or line of control due to natural calamities and illness caused by climatic conditions will be treated as physical casualties for statistical purposes and battle casualties for financial purposes.(added vide Corrigendum to SAO 8/S/85 on 15 May 1991).

(ix) Casualties taking place while carrying out battle inoculation/training will be treated as physical casualties for statistical purposes and battle casualties for financial purposes. (Added vide Corrigendum to SAO 8/S/85 on 15 May 1991).

1. Battle Accidents – Battle Accidents are those which take place in operational areas during the period of active hostilities but not in proximity to the enemy.) If the accident occurs in proximity to the enemy, it is classified as battle casualty.

2. Operational Area – Any geographical area occupied by a field force ordered to participate in specific operations/active hostilities against an enemy or insurgents. It will include all the areas within which operations are intended to be conducted as well as the locations of its integral, logistical and administrative installations providing support to the field force.

3. Active Hostilities –Active Hostilities cover actual operations against the

enemy, including preparatory activities, eg, reconnaissance and deployment prior to declaration of war, and all military moves and measures subsequent to a case-fire.

4. Proximity to Enemy – Any area dominated by enemy by small arms fire or observation coupled with mortar/artillery shelling or patrolling and ambush or sabotage activities will come within the purview of this term.

15. From the definitions given above, it is clear that when the death or disability occurs in non-operational areas or in operational areas where there is no fighting or whilst in aid to civil power to maintain internal security, such casualties are “physical casualties” (Para 3 above). When death occur or the disability is sustained in action against enemy forces or whilst repelling enemy air attacks, these casualties have been termed as “battle casualties” (Para 4 above). After defining “battle casualties” there are 12 Notes given thereafter. In Notes (i) to (v),(vii),(viii) and Notes (xi) and (xii) various other circumstances have been mentioned under which the death or disability may be treated as „battle casualties“.

16. It is abundantly clear from the definitions given above that any injury suffered in an operational area will

not necessarily be covered under the definition of "battle casualties" merely because it has been caused in operational area as the definition of "physical casualties" clearly indicates that physical casualties may occur in non-operational area as well as in operational area. In other words, it may be said that any death or disability caused either in non-operational areas or in operational areas where there is no fighting, such death or disability will be covered within the definition of „physical casualties“ entitling the individual only for disability pension. For declaring a death or disability as a battle casualty the case must fall in the definition of „battle casualty“ or in any of the „Notes“ appended below the definition of „battle casualty“. Thus this argument of the learned counsel for the petitioner cannot be accepted that merely because an injury has been caused in the operational area it should be treated as a battle causality.

17. We may now refer the relevant provisions of AO 1/2003/MP which has been relied upon by the learned counsel for the petitioner. After implementation of 5th Central Pay Commission Army order 1/2003/MP was issued by Adjutant General's Branch. In this Army Order under the Heading "Definitions", there are 11

paragraphs. The relevant paragraphs 2 to 9 are reproduced as under :

Definitions

"2. For the purpose of these instructions, definitions of various terms used herein will be as in the succeeding paragraphs.

3. Physical Casualties – Physical Casualties are those, which occur in nonoperational areas or in operational areas where there is no fighting. Casualties of this type consist of the following categories:-

(a) Died or killed.

(b) Seriously or dangerously ill.

(c) Wounded or injured (including self-inflicted)

(d) Missing.

4. Battle Casualties- Battle Casualties are those casualties sustained in action against enemy forces or whilst repelling enemy air attacks. Casualties of this type consist of the following categories :-

(a) Killed in action.

(b) Died of wounds or injuries (other than self-inflicted). (c) Wounded or injured (other than self-inflicted).

(d) Missing.

5. Circumstances for classification of Physical/Battle Casualties are listed in Appendix „A“.

6. Operational Area – Any geographical area occupied by a field force ordered to participate in specific operations/active hostilities against an enemy or insurgents. It will include all the areas within which operations are intended to be conducted as well as the locations of its integral, logistical and administrative installations providing support to the field force.

7. Battle Accidents ; Battle accidents are those which take place in operational areas during the period of active hostilities, but not in proximity to the enemy. (If the accident occurs in proximity to the enemy, it is called as battle casualty).

5. Proximity to Enemy – Any area dominated by enemy by small arms fire or observation, coupled with mortar/artillery shelling or patrolling and ambush or sabotage activities will come within the purview of this term.

6. Active Hostilities –Active Hostilities cover actual operations against the enemy or insurgents, including preparatory activities, eg, reconnaissance and deployment prior to declaration of war, and all military moves and measures subsequent to a case-fire.

18. Para 5 says that the circumstances for classification of Physical/Battle casualties are listed in Appendix „A“.

This Appendix „A“ is also reproduced as under :

CIRCUMSTANCES FOR CLASSIFYING CASUALTIES AS

BATTLE OR PHYSICAL Battle Casualties :

1. The Circumstances for classifying personnel as battle casualties are as under :-

(a) Casualties due to encounter with troops or armed personnel or border ;police of a foreign country, or during operations while in service with peace keeping missions abroad under Government orders.

(b) Air raid casualties sustained as a direct or indirect result of enemy air action.

(c) Casualties during action against armed hostiles and in aid to civil authorities, to maintain internal security and maintenance of essential services.

(d) Accidental injuries and deaths which occur in action in an operational area.

(e) Accidental injuries which are not sustained in action and not in proximity to the enemy, but have been caused by fixed apparatus (e.g. land mines, booby traps, barbed wire or any other obstacle) laid as

defences against the enemy, as distinct from those employed for training purposes, and if the personnel killed, wounded or injured were on duty and are not to blame, will be classified as Battle Casualties, notwithstanding the place of occurrence or agency laying those, viz. Own troops or enemy, provided the casualties occur within the period laid down by the Government.

(f) Casualties during peace time as a result of fighting in war like operations, or border skirmishes with a neighbouring country.

(g) Casualties occurring while operating on the International Border or Line of Control due to natural calamities and illness caused by climatic conditions.

(h) Casualties occurring in aid to civil authorities while performing relief operations during natural calamities like flood relief and earthquake.

(j) Casualties occurring while carrying out battle inoculation/training or operationally oriented training in preparation for actual operations due to gun shot wounds/explosion of live ammunition/explosives/mines. (k) Army personnel killed/wounded unintentionally by own troops during course of duty in an operational area. (l) Casualties due to vehicle accident while performing bonafide military duties in war/border skirmishes with neighbouring countries including action on line of control and in counter insurgency operations.

(m) Casualties occurring as a result of IED/bomb blasts by saboteurs/ANEs in trains/buses/ships/aircraft during mobilization for deployment in war/war like operations.

(n) Casualties occurring due to electrocution/snake bite/drowning during the course of action in counter insurgency war.

(o) Accidental death/injuries sustained during the course of move of arms/explosive/ammunition for supply of own forces engaged in active hostilities.

(p) Death due to poisoning of water by enemy agents resulting in death/physical disabilities of own troops deployed in operational area in active hostilities.

(q) Accident death/injuries sustained due to natural calamities such as floods, avalanches, land slide, cyclones, fire and lightening or drowning in river while performing operational duties/movements in action against enemy forces and armed hostilities in operational area to include deployment on International Border or Line of Control.

(r) Army personnel killed/wounded by own troops running amok in an operational area.

(s) Army personnel killed/wounded due to spread of terror during leave/in transit because of their being army personnel. Physical Casualties

2. Death caused due to natural causes/illness/ accident/ suicide/murder due to family disputes in operational and non-operational areas will be treated as Physical Casualties.

Miscellaneous Aspects

3. (a) Saboteurs, even of own country, will be treated as enemy for the purpose of classifying their actions as enemy action and encounters against them as encounters against the enemy.

(b) Report regarding personnel wounded or injured in action will specify the nature of the wound or injury and will also state whether the personnel remained on duty.

(c) Reports on personnel missing in action will indicate, if possible, their likely fate, e.g. „believed killed“, „believed prisoner of war“ or „believed drowned“ etc.

(d) Any casualty occurring during deployment/ mobilisation of troops, for taking part in war or war like operations, will be treated as battle casualty.

19. From the definition of "Physical Casualties" as given above it is clear that if any death or disability occurs either in a non-operational area or in an operational area, where there is no fighting, it is a physical casualty and not a battle casualty. Battle Casualties are those casualties which are sustained in action against enemy forces or whilst repelling enemy air attacks or which are covered in any of the clauses of Appendix "A" above.

20. Besides, the above, even-if it be assumed that the applicant suffered injury while returning from operation Meghdoot due to sliding iceberg, even in that case, the applicant shall not be entitled to any benefits flowing from battle casualty injury. The injury suffered by the Applicant can well be treated as physical casualty which is not covered by any category. In this connection, I would like to refer to a decision of Armed Forces Tribunal Chandigarh Bench which in **O.A. No. 2543 of 2012 Tejbir Singh Vs Union of India and others** decided on 02.05.2014 observed as under:

“45. Learned counsel for the petitioner has argued that the disability sustained by the petitioner is due to natural calamities. We find that there is no force in this argument. When the disability is caused due to climatic conditions or due to floods, avalanches, landslides, cyclones, firing, lightening etc. then the same may be said to have been caused due to natural calamities. In the case at hand the petitioner sustained injury due to fall at an ice patch which circumstance can in no way be said to be a natural calamity.

46. We do not propose to say that to cover the cases of deaths or disabilities in Category D or E, the deaths or disability should in all cases take place during fighting or action. There are several situations mentioned in Categories D & E where death or disability does not take place in „action“ yet they fall in category D or E. Cases of electrocution/attack by wild animals, snake bite, land slide, cyclones are the instances where death or disabilities are not during any fighting with enemy but they fall in category D. Similarly, the deaths or disabilities arising as a result of poisoning of water by any enemy while deployed in an operational area are in category E although the deaths or disabilities have not taken place in „action“. But when we talk about disabilities which occur during „operations“, it has to be established that the disability was caused when there was a fight with the enemy or the Force was „in action“ in relation to the enemy. Thus in order to make out a case of war injury pension the case has to be covered in any of the circumstances as given in

category D and E of the said letter dated 31.01.2001.

47. In the present case the injury has been sustained by the petitioner when he slipped on an icy patch while opening the route by removing snow. This injury is neither a battle casualty nor is covered under any of the circumstances given in category D and E entitling war injury pension. The injury sustained by the petitioner is a physical casualty for which he has rightly been paid disability pension.

48. In view of the entire discussion, the present petition is liable to be dismissed on the ground of limitation as well as on merits. 49. The petition is accordingly dismissed. "

21. In view of the above, I am of the view that the Applicant is not entitled to any benefit flowing from Battle Casualty Pension.

22. However, in the facts and circumstances of the case as the disability of the applicant has been opined to be aggravated due to military service, the regard being had to the decision of the Apex Court in **Union of India and Ors v 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 whether or not an individual who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the Military service. The relevant portion of the decision being relevant is excerpted below:-

"4. By the present set of appeals, the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the Military service, is entitled to be granted the benefit of rounding off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. We have heard Learned Counsel for the parties to the lis.

6. We do not see any error in the impugned judgment (s) and order(s) and therefore, all the appeals which pertain to the concept of rounding off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting

appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension."

23. As a result of foregoing discussion, we are of the view that the Applicant is entitled to disability pension vis a vis his disability which was assessed as 20% for life. The prayer for rounding off of disability is also allowed and the disability which was initially assessed as 20% for life shall stand rounded off to 50% for life.

24. Coming to the third prayer of the applicant i.e. for grant of service element of disability pension. I feel that the AFT Lucknow judgement of 12-12-2011 has clearly directed grant of disability pension. Disability pension has two elements i.e. disability as well as service element hence in my opinion the applicant is entitled to service element of pension.

25. In the result, the O.A is partly allowed. The impugned orders rejecting the claim for disability pension and its rounding off are set aside. The Applicant shall be entitled to disability pension with disability element as well as service element. The disability element at the rate of 20% for life which on being rounded off shall come to 50% for life. The Respondents are also directed to pay arrears of aforesaid disability pension alongwith interest @ 9% per

annum from preceding three years of filing this O.A. The date of filing of the O.A is 25.10.2016. The Respondents are directed to give effect to the order within four months from the date of receipt of a certified copy of this order.

**(Air Marshal BBP Sinha)
Member (A)**

Dated: 16 January, 2018

MH/-