

COURT No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 402 of 2017**Tuesday, this the 02nd day of January, 2018**“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal BBP, Sinha, Member (A)”**Prem Beer Singh, **(No-4563800P)** Ex. Hawaldar ,S/o Birendra Singh R/o-
63, Shanti Road, Naveen Nagar, Etah, (U.P.)..... **Applicant**Ld. Counsel for the : **Shri Nand Kishore, Advocate**
Applicant (Counsel for the applicant)

Versus

1. Union of India through, the Secretary Ministry of Defence Govt. of India, New Delhi.
2. The Office in Charge of Record 15 Mahar Regiment Saugar M.P. P.N- 47001.
3. The Chief Controller Defence Account (Pension) Draupadi Ghat, Allahabad.

----- Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal, Advocate,**
Respondents. Sr.Central Govt Standing Counsel.**Assisted by** : **Maj Piyush Thakran, OIC Legal Cell.**

ORDER (Oral)

1. This instant Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for rounding off of disability pension.
2. Heard Shri Nand Kishore, Ld. Counsel for the applicant and Dr. Shailendra Sharma Atal, Ld. Counsel for the respondents, assisted by Maj Piyush Thakran, OIC Legal Cell and perused the records.
3. The applicant was recruited in the Indian Army (Mahar Regiment) as Sepoy on 25.06.1993 and later on reached to the rank of Havildar. While attaining the age of superannuation, the applicant suffered with medical ailment and he retired from service with 30% disability for life which he is in receipt of with effect from 30.06.2017 i.e. the date of discharge.
4. The Ld. Counsel for the respondents conceded that the applicant is in receipt of 30% disability pension. The same is also reflected in his PPO. However he pleaded for more time to file Counter Affidavit. The Ld. Counsel for the applicant objected to giving more time for filing Counter Affidavit on the grounds that two opportunities have already been given earlier to respondents.

5. Ld. Counsel for the applicant submitted that the applicant was discharged with low medical category of 30% disability for life which is required to be rounded off to 50% for life. The case is squarely covered by catena of judgments of Hon'ble Supreme Court on this matter.

6. Here we would like to quote operative portion of the judgment of the Hon'ble Supreme Court on rounding off of disability pension rendered in the case of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014:-

“4. By the present set of appeals the appellant raise the question, whether or not, an individual, has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to suffering from some disability which is attributable or aggravated by the military service, is entitled to grant the benefit of rounding-off of disability pension. The appellant(s) herein would contend that, 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 on 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 at length.

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.”

In the light of the aforesaid judgment, the applicant's disability pension is rounded off to 50% for life from three preceding years from the date of filing of the present petition i.e. with effect from 12.09.2015.

7. However though PPO is clearly indicating receipt of 30% of disability pension however since Counter Affidavit has not yet been filed, it shall be open to the respondents to verify the claims of applicant on factual basis. In case of any factual discrepancy they are at liberty to approach this Tribunal within three months from the date of this judgment.

8. We **dispose** of the present O.A. in terms of the above judgment with a direction to the respondents to release the disability pension @ 50% along with arrears within a period of four months from the date of receipt of a certified copy of this order. In case this order is not complied with within the stipulated period, the amount so accrued shall carry interest @ 10% per annum from the due date, till actual payment thereof.

O.A. is **allowed** accordingly.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: January, 02, 2018.

BLY