

RESERVED
Court No. 1

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

ORIGINAL APPLICATION NO 525 of 2017

Thursday, this the 04th day of January, 2018

“Hon’ble Mr. Justice D.P. Singh, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”

JC-378238L Hony Sub Major Virendra Bahadur Singh son of Shri Sharda Bali Singh resident of Village-Khujhi Kalan, P.O.- Shitlaganj, District-Pratapgarh.

....Applicant

Ld. Counsel for the: **Shri Prabhat Kumar Mishra, Advocate**
Applicant

Verses

1. The Union of India through the Secretary, Department of Defence, New Delhi.
2. The Chief of Army, IHQ of MoD, Sena Bhawan, New Delhi.
3. AG’s Branch/Mp-6 (B), IHQ of MoD (Army), West Block-III, R.K. Puram, New Delhi.
4. Office In Charge, The Records Signals PIN-908770 C/O 56 APO.
5. The PCDA (P), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the : **Shri AK Sahu, Central**
Respondents. Govt Counsel assisted by Maj
Salen Xaxa, OIC Legal Cell.

ORDER**“Per Air Marshal BBP Sinha, Member (A)”**

1. The present application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for rounding off of disability pension.

2. Heard Shri Prabhat Kumar Mishra, Ld. Counsel for the applicant and Shri A.K. Sahu, Ld. Counsel for the respondents, assisted by Maj Salen Xaxa, Legal Cell and perused the records.

3. The applicant was recruited in the Indian Army as Sepoy (Signalman) on 13.07.1985 and later on reached to the rank of Subedar. While attaining the age of superannuation, the applicant suffered with ‘Adhesive Capsulitis (Rt) Shoulder and was released in medical category S1H1A3(Permanent)P1E1 from service on 31.07.2015 under Army Rule 13 (3) Item I (i) (a) after rendering 30 years and 19 days of service. The Release Medical Board opined the disability @ 20% for life attributable to military service.

4. The Ld. Counsel for the respondents conceded that the applicant is in receipt of 20% disability pension.

5. Ld. Counsel for the applicant submitted that the applicant was discharged with low medical category of 20% 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 01.08.2015 because the applicant was released from service with effect from 31.07.2015.

7. 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) (Justice Devi Prasad Singh)
Member (A) Member (J)

Dated: January, 2018
BLY/-