

COURT NO.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****O. A. No. 636 of 2017**

Wednesday, this the 10th day of January, 2018

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

Jai Singh Yadav (No. JC-217945K Ex. Sub.) S/O Sri Bhumi Raj
Singh Yadav, R/o Mohalla PWD Road, Near Plaza Guest House,
Shiv Colony, Fatehgarh, District Farrukhabad, PIN - 209601.

..... **Applicant**

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

Versus

1. The Union of India through Secretary, Ministry of Defence, D.H.Q. Post Office, New Delhi.
2. The Officer Incharge, Records, Brigade of Guards, Kamptee - 441001.
3. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

--- Respondents

Ld. Counsel for the : **Dr. Gyan Singh, Advocate,**
Respondents.

Assisted by : **Maj Salen Xaxa, OIC Legal Cell.**

ORDER (Oral)

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act 2007 for grant of relief of rounding off of disability which has been assessed as 30% for life and has been opined to be aggravated on account of stress and strain of military service by the Release Medical Board.

2. The facts in nutshell are that the Applicant was enrolled in the Indian Army on 08.09.1976 and was discharged from service on 30.09.2004 after rendering 28 years of service under Rule 13 (3) I (i) (a) of the Army Rules, 1954. Before discharge, since the applicant was in low medical category, he was brought before Release Medical Board held on 20.04.2004 which assessed his disability as 30% for life and opined the same as aggravated by military service. The claim for disability pension was processed and forwarded to the PCDA (P) Allahabad which granted disability pension at the rate of 20% for life.

3. The quintessence of contentions advanced by learned counsel for the respondents is that in terms of para 7.2 of Govt of India, Ministry of defence letter dated

31.01.,2001, the provisions for rounding off benefits are applicable for those who are invalided out from service only on medical ground which is either attributable to or aggravated by the Military service. Since the Applicant was discharged on completion of service tenure, he was not entitled to benefits of rounding off of disability.

4. The law on rounding off of disability pension is well settled vide **Hon'ble Supreme Court** in Civil Appeal No. 418 of 2012, **Union of India and others** vs. **Ram Avtar**, on 10.12.14. Paras 4,5 6and 7 of the judgment being relevant is quoted below.

"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 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.”

5. In view of above his disability element will stand rounded off from 20% to 50% for life.

6. 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 20.09.2017. In view of settled position in law in the case of Shiv Das (supra), the applicant shall be entitled to enhanced disability pension with effect from 01.09.2014

7. As a result of foregoing discussions, the O.A is allowed. The impugned orders are set aside. The

respondents are directed to pay disability pension at the rate of 20% for life which on being rounded off would come to 50% for life. However, payment of enhanced 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.

8. There shall be no order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: 10 January, 2018

MH/-