

RESERVED

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 210 of 2018

Wednesday, this the 18th day of April, 2018

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
“Hon’ble Air Marshal BBP Sinha, Member (A)”

Lt Col (Retd) No. 29826E Shamsheer Bahadur Singh, Son of late
 Shri P D Singh, Resident of 555G/A-31, Subhash Nagar,
 PO Manas Nagar, Lucknow - 23

..... Applicant

Ld. Counsel for the: **Shri V.A. Singh**, Advocate
 Applicant

Versus

1. Union of India and others through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff Integrated HQ of Mod (Army) DHO PO, New Delhi-110011.
3. Addl Dte Gen of Manpower (Policy and Planning)/ MP 5&6, Adjutants General’s Branch, IHQ of MoD (Army), Wing No. 07, II nd Floor, West Block-III, RK Puram, New Delhi -66

.....Respondents

Ld. Counsel for the: **Ms Appoli Srivastava**, Advocate,
 Respondents. assisted by **Maj Salen Xaxa**, OIC Legal Cell.

ORDER**(Per Hon’ble Air Marshal BBP Sinha, Member (J))**

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for rounding off of disability pension presently being given to him @ 30%. The applicant has prayed for the following relief:-

“(i) To direct the respondents to issue fresh PPO after rounding off applicant’s disability pension w.e.f. 08.03.2003 from 30% to 50% and pay all balance of arrears alongwith.”

(ii) To pass orders which their Lordships may deem fit and proper in the existing facts and circumstances of the case.

(iii) Allow this application with cost. ”

2. The applicant was commissioned in the MAHAR REGIMENT on 15.03.1970 and superannuated from service on 30.09.2001, in low medical category. The Medical Board held before discharge assessed applicant’s disability element as 30% for the period from 01.10.2001 to 07.03.2003 as he was found to have been suffering from Primary Hypertension, vide PPO dated 26.12.2002. Applicant’s disability was further assessed and he was sanctioned 30% disability pension for life, vide Corr. PPO M/DIS/50/2003 w.e.f. 08.03.2003. It is stated that thereafter, the applicant was granted disability element at 30% but was not granted the benefit of rounding off. The only prayer made in this petition is for grant of relief of rounding off.

3. In the instant case, no counter affidavit has been filed as the facts stated in the petition are admitted by the respondents. The respondents have not disputed that the applicant suffered disability to the extent of 30% for life. Additionally, copy of the PPO annexed by applicant conforms that he is in receipt of 30% of disability pension.

4. We have considered the submissions of the learned counsel for the parties and perused the material placed on record.

5. 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.

6. The larger Bench of Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 1439 of 2016, **Ex Sgt Girish Kumar vs. Union of India & Ors** relying upon the decision of Hon'ble Apex Court in the case of **Davinder Singh vs. Union of India & Ors** (C.A. No. 9946 of 2016) decided on 20.09.2016 has held that the benefit of broad banding of disability/war injury element of pension will be with effect from 01.01.1996. The relevant portion of the Full Bench decision in the case of **Ex Sgt Girish Kumar** (supra) is reproduced as under :-

“55. After having fully discussed the issue involved before us and to set the controversy at rest vis-à-vis arrears of broad banding of the disability/war injury element of disability pension on the ground of delay in filing application(s) by the individual/applicant(s), we conclude grant of arrears of broad banding of disability pension, stands answered in the fact that all applicants will be entitled to broad banding of disability/war injury element of pension with effect from 01.01.1996, irrespective of whether they retired pre-1996 or post-1996 without any restriction of arrears of three years.”

7. In view of the above the Original Application deserves to be allowed. So far as the date of rounding off of the disability pension is concerned, although the applicant has prayed disability pension w.e.f. 08.03.2003 but the same is granted w.e.f. 01.10.2001 i.e. the date since when applicant's disability element was assessed as 30% for the period from 01.10.2001 to 07.03.2003 and was granted disability pension accordingly, in view of the decision of larger Bench of Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 1439 of 2016,

Ex Sgt Girish Kumar vs. Union of India & Ors relying upon the decision of Hon'ble Apex Court in the case of **Davinder Singh vs. Union of India & Ors** (C.A. No. 9946 of 2016) decided on 20.09.2016 (supra). Accordingly, the relief of the applicant in respect of rounding off of disability pension is moulded to this extent and is given retrospectively.

8. Accordingly the O.A. is **allowed**. In the facts and circumstances of the case, the disability of the applicant shall stand rounded off from 30% to 50% for life w.e.f. 01.10.2001. 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 @ 9% on the amount accrued from due date till the date of actual payment.

9. No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

Dated : April 18, 2018

JPT

(Justice SVS Rathore)
Member (J)

Form No. 4
{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO. 1

O.A. No. 210 of 2018

Shamsher Bahadur Singh
 By Legal Practitioner for the applicant
 Vs

-Applicant

Union of India & Ors
 By Legal Practitioner for Respondents

-Respondents

	<p><u>18.04.2018</u></p> <p><u>Hon'ble Mr. Justice S.V.S. Rathore, Member (J)</u> <u>Hon'ble Air Marshal BBP Sinha, Member (A)</u></p> <p style="text-align: center;">Judgment pronounced. O.A. is allowed. For orders, see our judgment and order of date passed on separate sheets.</p> <p style="display: flex; justify-content: space-between;"> (Air Marshal BBP Sinha Member (A) JPT (Justice S.V.S. Rathore Member (J) </p>
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