

Court No. 1
Reserved Judgment

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
ORIGINAL APPLICATION NO. 83 of 2018**

Tuesday, this the 17th day of April, 2018

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

No. 13896088-L Hony Nb Sub Bharat Prasad Gupta , Son of Shri Ramawatar Sah, Permanent resident of Vill – Selour, P.O. – Guthani, Tehsil – Siwan, P.S. Guthani, District – Siwan, State – Bihar, Pin Code – 841435, Presently residing at Patel Nagar, Post Nilmatha, P.S. – P.G.I., District – Lucknow. **....Applicant**

Ld. Counsel for the Applicant : **Shri O.P. Kushwaha,
Advocate.**

Verses

1. The Union of India, through the Secretary, Ministry of Defence (Army), New Delhi – 110011.
2. The Chief of Army Staff, IHQ of MoD (Army). Sena Bhawan, New Delhi.
3. Officer-in-Charge Records, ASC Records (South), Pin – 900493, C/o 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the Respondents : **Shri Bhanu Pratap Singh,
Advocate, Central
Govt Standing Counsel.**

Assisted by : Maj Salen Xaxa, OIC Legal Cell.

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

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

A. To issue/pass an order or directions to the respondents to rounding off the disability pension of the applicant @30% to 50% alongwith 12% interest of the arrear from the date of discharge.

B. To issue/pass an order to the respondents to decide the Representation dated 11.10.2017 in light of Hon’ble Apex Court judgments and Government of India, MoD letter dated 31.01.2001.

C. To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the Applicant.

D. To allow this original application with costs.”

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army on 25.04.1987 and was discharged from service on 30.04.2011 under Army Rule 13 (3) III (iii) of 1954 on completion of service of 24 years and 6 days. Before discharge, he was brought before the Release Medical Board which has declared him to be suffering from PRIMARY HYPERTENSION. The Release Medical Board assessed the disability as 30% for life and

opined it to be aggravated by military service. The applicant has been granted service pension alongwith disability pension at the rate of 30% for life but the same was not rounded off. In this connection, the applicant preferred a representation dated 11.10.2017 which is said to be undecided till date as no orders have been passed on his request for rounding off. Aggrieved, the applicant has preferred the instant Original Application.

3. Per contra, the respondents contend that consequent upon implementation of 7th C.P.C., policy for grant of benefit of broad-banding of disability element has been revised vide Ministry of Defence letter No 17 (2)/2016-D (Pen/pol) dated 04 Sep 2017. It is contended that as per the revised provisions on rounding off, the effective date for rounding off being prospective is from 01.01.2016. Thus the applicant shall be eligible for grant of benefit of broad banding of disability element from 30% to 50% from 01.01.2016 and not from the date of his discharge.

4. We have heard learned counsel for the Applicant as well as learned counsel for the respondents. We have also perused the material facts on record.

5. The issue of rounding off is no more res integra. 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.

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 from the date of discharge i.e. 30.04.2011. 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)

(Justice S.V.S. Rathore)
Member (J)

Dated: April, 17, 2018

MH/-