

**RESERVED****COURT NO.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 196 of 2018**Thursday, this the 12<sup>th</sup> day of April, 2018**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

SS- 133159 Ex. Major Rakesh Tomar Son of Sri Bharat Singh, R/o 117/H-1/349-A, Model Town Pandu Nagar Hans Nagar, Kanpur Nagar U.P.

**.... Applicant****Ld. Counsel appeared - Shri S.G. Singh, Advocate**  
**for the applicant**

Versus.

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Deputy Director AG/PS-4 (Imp II), AG's Branch, Integrated Headquarter of Ministry of Defence (Army) Plot No. 108 (West) Brassy Avenue Church Road New Delhi- 110011
4. DADS, Pension, Allahabad.

**..Respondents****Ld. Counsel appeared - Dr S.N. Pandey, Advocate,**  
**for the Respondents** **Learned counsel for the respondents,**  
**Assisted by- Maj Salen Xaxa,**  
**OIC Legal Cell****ORDER****(Per Hon'ble Air Marshal BBP Sinha, Member (A))**

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for following relief:-

“ (a) Issue/ Pass an order or direction of appropriate nature whereby commanding the respondents to consider the case of applicant as per rounding off scheme and thereafter grant disability pension of 50% in place of 20% from 30.08.2006.

(b) Allow the application with all consequential benefits with exemplary cost. ”

2. The brief facts of the case, as stated by both the parties are that the applicant was commissioned in the Indian Army on 04.09.1987 through Short Service Commission in medically fit condition and was released from service with effect from 03.09.1997 on completion of 10 years of service. The Release Medical Board held before discharge, assessed the disability of the applicant as 20% for life and opined it to be attributable to military service. Thereafter, the Applicant was sanctioned disability pension at the rate of 20% for life. The present O.A. has been preferred for the relief of rounding off of the disability pension in terms of the Govt policy dated 31.01.2001 and also regard being had to the various decisions of the Apex Court on the point.

3. Being aggrieved by denial of rounding off of disability pension from 20% to 50%, the applicant has approached this Tribunal by means of present O.A., accompanied with an application for condonation of delay as there was a delay of more than ten years in filing of the O.A., which has been condoned vide order dated 09.04.2018.

4. We have heard learned counsel for the applicant as also, Ld. Counsel for the respondents and perused the record. We have also perused the PPO (Annexure –A-1 to the O.A) vide which the applicant is in receipt of 20% disability pension.

5. In the instant case, the respondents have filed the counter affidavit, admitting in its Paras- 3 and 4 that the applicant was released from

service after completion of 10 years of service and also that he is getting disability pension @ 20% till date although some of the contents they have denied vaguely. During arguments also, the learned counsel for the respondents has conceded that the applicant is in receipt of 20% disability pension. According to the applicant as per policy of Broad Banding Rounding Off Pension Scheme of the respondents the incumbent whose disability percentage is less than 50% is to be rounded off to 50% and is entitled to get disability pension @ 50%. The applicant preferred representation dated 01.05.2017 vide Annexure –A-2 to the O.A. for redressal of his grievance i.e. rounding off of his disability pension to 50% but till date no orders have been passed on the said representation by the respondents.

6. On the issue of rounding off of disability pension, we are of the opinion that the instant case falls within the four corners of the decision in the case of ***K.J.S. Buttar vs Union of India and ors***, (2011)11 SCC 429 and Review Petition (C) NO. 2688 of 2013 in Civil Appeal No. 5591/2006, ***Union of India & anr vs. K.J.S.Butter*** and ***Union of India vs. Ram Avtar & ors*** (Civil Appeal No. 418 of 2012 decided on 10<sup>th</sup> December, 2014).

7. As to the period of entitlement of the applicant to receive arrears of disability pension, 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.”*

8. Thus though the applicant has prayed for rounding off of his disability pension from 20% to 50% w.e.f. 30.08.2006, it will be in the interest of justice, if the Armed Forces Tribunal Principal Bench judgment as quoted above is extended to the applicant.

9. In view of the above the Original Application deserves to be allowed. Accordingly the O.A. is **allowed**. The disability pension which was assessed as 20% for life shall stand rounded off to 50% for life from the date of discharge i.e. 03.09.1997. 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.

10. There shall be no order as to cost.

**(Air Marshal BBP Sinha)**  
**Member (A)**

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

Dated: April 12, 2018  
JPT/-