

**Court No.1**  
**Reserved Judgment**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

**Original Application No. 15 of 2015**

Monday this the 14<sup>th</sup> day of December, 2015

**Hon'ble Mr. Justice V.K. DIXIT, Member (J)**  
**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

No 13695527P Ex Naik Kushal Pal Singh  
Sri Balveer Singh, Aged about 39 years,  
R/o Village-Majhgawan, Post Office-Bahadurpur,  
District-Kannauj PIN-209728 (UP)

..... Applicant

By Legal Practitioner Shri R. Chandra, Advocate

Versus

1. Union of India, through, the Secretary,  
Ministry of Defence, Government of India,  
New Delhi
2. The Officer In-charge  
Records The Brigade of the Guards  
PIN-900746  
C/o 56 APO
3. The Chief Controller Defence Accounts,  
Draupadi Ghat  
Allahabad (UP)

..... Respondents

By Legal Practitioner Shri Ashutosh Kumar Srivastava, Learned  
Counsel for the Central Government

**ORDER**

**“Hon’ble Lt Gen Gyan Bhushan, Member (A)”**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the reliefs as under:-

*“(I) The Hon’ble Tribunal may kindly be pleased to quash the order dated 24.09.2014 (Annexure No A-1) issued by respondent No 2.*

*(II) The Hon’ble Tribunal may kindly be pleased to direct the respondents to grant the disability pension to the applicant for 100 percent disability w.e.f. 01.09.2011 (Date of discharge) alongwith the arrears including interest at the rate of 24 percent per annum.*

*(III) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.”*

2. The present application has been preferred for relief of rounding off of disability pension already granted to the applicant. The admitted and undisputed fact of the case is that the applicant was enrolled in the Army on 04.03.1995 and was discharged from service on 31.08.2011 (Afternoon) under Rule 13 (3) III (IV) of Army Rules 1954 at his own request. The applicant is in receipt of 80% disability pension for life which has been confirmed by the learned counsel for the respondents also.

3. Heard Shri R. Chandra, Learned Counsel for the applicant, Shri Ashutosh Kumar Srivastava, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that the applicant is getting disability pension @ 80% for life but has been denied the benefit of rounding off as per Govt of India, Ministry of Defence, New Delhi letter No.1(2)/97/D(Pen-C) dated 31.01.2001. The applicant made a representation on 01.08.2014 for rounding off from 80% to 100% but it was denied to him on the ground that this benefit is not applicable to those personnel who are invalided out of service before completion of their terms of engagement at their own request, as such he is not authorized. Learned counsel for the applicant submitted that earlier people who were discharged at their own request, were not granted disability pension also, however, now they are authorized to draw disability pension as such the benefit of rounding off should be extended to the applicant also. Learned counsel for the applicant relied on the judgment of **K.J.S. Buttar vs. Union of India and others** reported in SCC 2011, XI, 429 and **Civil Appeal No. 5591/2006, U.O.I. & ANR vs. K.J.S. Buttar** and submitted that the benefit of rounding off should be extended to him.

5. Per contra, learned counsel for the respondents has submitted that the applicant is not entitled for rounding off of disability pension in terms of Govt of India letter dated 31.01.2001. The rounding off benefit is applicable to personnel who are invalided out of service. Personnel who are discharged at their own request before completion of their terms of

engagement are not entitled to the benefit of the rounding off. Since the applicant was discharged from service at his own request before completion of his terms of engagement, as such he is not authorised to benefit of rounding off.

4. The main issue for consideration in the instant case is whether the applicant would be entitled to benefits of rounding off of the disability pension since he was discharged from service at his own request before completion of his terms of engagement. In connection with the submission, we feel called to Para 53 of Pension Regulations for the Army 1961 (Part-1).

It being relevant, is quoted below :-

**Para 53 of Pension Regulations for the Army 1961 (Part-I)**

*“53. (1) An officer retired on completion of tenure or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by Military service and recorded by Service Medical Authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20% or more, and service element, if the degree of disability is less than 20%. The retiring pension/retiring gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.*

*(2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of a disease on the date of first removal from duty on account of that disease.”*

7. Hon'ble The Apex Court in the case of **K.J.S. Buttar vs Union of India and others reported in SCC 2011, XI, 429** has observed that a person who was discharged by retirement on completion of terms of service with a disability, was held to be 'invalided out' and was held entitled to the benefit of 'broad banding'. Hon'ble The Apex Court in Paras 17 & 18 of the judgment of **K.J.S. Buttar** (supra) has observed as under :-

*"17. The respondents submitted that the appellant was not entitled to the above benefits as he had retired on completion of his Short Service Commission of 10 years and had not been invalided out of service.*

*18. In this connection it may be mentioned that the appellant was invalided out and released in a low medical category with permanent disability assessed at 50% by the Release Medical Board. As per the Defence Services Regulations/Pension Regulations for the Army 1961 where any officer is found suffering from disability attributable to or aggravated by Military Service he shall be deemed to have been invalided out of service. Relevant provision (page 25 additional documents) read as under :-*

**53. Officers Compulsorily Retired on Account of Age or on Completion of Tenure.**

*(1) An officer retired on completion of tenure or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by service medical authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20% or more, and service element, if the degree of disability is less than 20%. The retiring pension/retiring gratuity, if already*

*sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.*

*(2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease.*

*In our opinion the appellant is entitled to the benefit of the above Regulation.”*

8. *Hon’ble The Supreme Court in **Review Petition (C) No. 2688 of 2013 in Civil Appeal No. 5591/2006, U.O.I. & ANR vs K.J.S. Buttar** dismissed the Review Petition both on ground of delay as well as on merits on 21.01.2014.*

9. **In Union of India and Ors vs Ram Avtar & ors (Civil Appeal No. 418 of 2012 dated 10<sup>th</sup> December 2014)** in which Hon’ble The Apex Court nodded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have been invalided out of service on account of being in low medical category or who has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to be suffering from some disability. The relevant portion of the decision being relevant is excerpted below:

*“4. By the present set of appeals, the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding off of*

*disability pension. The appellant(s) herein would contend that, on 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 only 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 to 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.*

*8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us."*

10. It would appear that in the aforesaid case, the Union of India had taken in challenge the various orders of Tribunal whereby the benefit of rounding off of disability pension was granted to those personnel who had retired on superannuation or on completion of tenure of engagement. The bunch of appeals culminated in being dismissed and the judgments of the High Court and Armed Forces Tribunal Benches were noded in approval attended with direction that the dismissal of those appeals will be taken note of by the High Courts as well as by the Armed Forces Tribunal Benches in granting appropriate relief to the pensioners before them. When the peremptory direction of the Hon'ble Apex Court is applied to the present

case, it would lead us to the conclusion that the applicant, who has retired on attaining the age of superannuation on being low medical category or who has been invalided out of service either at his own request or due to restrictions of service conditions, would also be entitled to the benefit of rounding off. No categorical restriction has been made between types of invalidments. It is also observed that disability pension earlier was not being granted to personnel who were discharged from service at their own request before completion of their term of engagement, however, after catena of judgments of Armed Forces Tribunal, eg. Principal Bench judgment dated 07.02.2012 in O.A. No. 336 of 2011 Maj (Retd) Rajesh Kumar Bhardwaj vs. Union of India and others and Armed Forces Tribunal, Regional Bench Chandigarh judgment dated 07.05.2013 in O.A. No. 2952 of 2012 Col (Retd) S.P.S. Bedi vs. Union of India and others, disability pension has been granted to such cases. Keeping in view the directions which flow from judgments quoted above, it is evident that if such personnel are now entitled to grant of disability pension, they deserve the benefit of rounding off also. Relevant portions of AFT, Principal Bench judgment in case of **O.A. No. 336 of 2011 Maj (Retd) Rajesh Kumar Bhardwaj vs. Union of India and others** is reproduced below :

*“A similar question came up before us in the case of **Lt Col P.K. Kapur (Retd) Versus Union of India bearing O.A. Nos. 139 of 2009 decided on 30.06.2010**” and after reviewing all*



cases on the subject and considering the law of precedent held that the latest judgment in point of time has to be accepted in the event of conflict of judgments between the two coordinating bench, decision given in the case of **“Union of India & Anr. Versus S.P.S. Vains & Ors. (Supra)”** hold field till it is reviewed. In the case of **Union of India & Anr. Versus S.P.S. Vains & Ors. (Supra)** their Lordships have held that this kind of artificial distinction within the similarly situated persons by putting a cut-off date cannot be said to be rational and reasonable. Following that judgment, we have struck down the notification dated 04.05.2009 to the extent of pre & post distinction of 01.01.2006 in the case of **“Lt Col P.K. Kapur (Retd) Versus Union of India (Supra)”**.

After that in a recent judgment delivered Hon'ble Supreme Court in the case of **“K.J.S. Buttar Versus Union of India and Anr. (Supra)”** their Lordships have further observed that distinction based with regard to Article 14- Disability Pension- Applicant, an ex-captain in Indian Army- Commissioned on 12.01.1969- Suffered serious permanent injuries during service- Invalidated out of service- Injury held attributable to military service and degree of disability assessed at 50%- Released from service in Low Medical Category on 10.04.1997- Granted disability pension w.e.f. 26.07.1979- Prayer for disability to be treated at 75% instead of 50% as per Ministry of Defence letter dated 31.01.2001- Respondent contended that the disability cannot be enhanced to 75% as the relevant provision being para 7.2 of Government of India, Ministry of Defence, letter dated 31.01.2001 is applicable only to those officers who were invalidated out of service after 01.01.1996- Appellant invalidated much before 01.01.1996. Held, such restriction of the benefit is violative of Article 14 and hence illegal. Deoki Nandan Aggarwal's case relied [JT 1991 (3) SC 608]. In case of liberalization of an existing scheme, all are to be treated equally as was the case in hand. But if it is Introduction of a new retiral benefit, its benefit will not be

*available to all. Letter of the Ministry of Defence dated 31.01.2001 is only liberalization of an existing scheme. State v. Justice S.S. Dewan [JT 1997 (5) SC 26] held that the restriction of the benefit to only officers who were invalidated out of service after 01.01.1996 is violative of Article 14 of the Constitution and is hence illegal. We are fortified by the view as taken by the decision of this Court in Union of India & Anr. V. Deoki Nandan Aggarwal [JT 1991 (3) SC 608] (Para 11).”*

11. In view of the above as also keeping in view directions given by Hon’ble The Apex Court in the cases of **K.J.S. Buttar vs. Union of India & others** (supra) and **Union of India & others vs. Ram Avtar** (supra), we are of the considered view that in conformity with the Rules, Regulations and the dictum of law laid down by Hon’ble The Apex Court, the applicant is entitled to the benefit of rounding off of disability pension from 80% to 100% for life.

### **ORDER**

12. In the result, the Original Application succeeds and is allowed. The impugned order dated 24.09.2014 (at Annexure No. A-1 of Original Application) is set aside. The applicant is entitled for the benefit of rounding off and shall be paid the disability pension by extending the benefit of rounding off @ 100% for life from the date of discharge i.e. 31.08.2011 (Afternoon). The enhanced disability pension alongwith the arrears is directed to be disbursed to the applicant from the due date within three months from the date certified copy of this order is served upon the respondents. In case the respondents

fail to pay the amount to the applicant within three months from the date of judgment, they will have to pay interest @ 9% from due date till the date of actual payment.

13. There will be no orders as to costs.

(Lt Gen Gyan Bhushan)  
Member (A)

(Justice V.K. DIXIT)  
Member (J)

Dated : December , 2015  
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