

RESERVED
Court No.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 184 of 2018

Thursday, this the 20th day of December 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal B.B.P. Sinha, Member (A)

No.14520964P Ex. Hav. Gauri Shanker Dubey, Son of Shri Surya Narayan Dubey, Resident of House No. 39A, Ashoka Gas Godam Road, Singhadiya, Kunraghat, Gorakhpur (U.P.) PIN-273008.

..... Applicant

Ld. Counsel for the: **Shri R.Chandra**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110011.
2. The Officer-In-Charge, EME Records, Secunderabad (APPLICANT).
3. The Chief Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014.

..... Respondents

Ld. Counsel for the
Respondents

:Shri Ashish Kumar Singh
Central Govt Counsel.

ORDER**“Per Hon’ble Air Marshal B.B.P. Sinha, 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, whereby the applicant has sought following reliefs:-

“(I) The Hon’ble Tribunal may kindly be pleased set aside the order dated 29/08/2017 (Annexure No A-1).

“(II) The Hon’ble Tribunal may kindly be pleased to direct the respondents to grant the benefit of rounding of disability pension to the applicant @50 percent disability pension instead of 30% percentage w.e.f. 01/08/2000 (date of discharge) along with 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. Briefly stated facts of the case are that the applicant was enrolled in the Army Medical Corps of the Indian Army on 30.11.1974 and was discharged in the rank of Havildar in low medical category P2 (Permanent) on 31.07.2000. The applicant was discharged after rendering 25 years 08 months and 01 days of service in low medical category under Rule 13 (3) III (i) of the Army Rules 1954. The release medical board held on 04.05.2000 i.e. at the time of discharge assessed his disability “BRONCHIAL ASTHMA (493)” to be ‘ATTRIBUTABLE’ to military service and assessed his disability @20% for two

years. Accordingly, P.P.O. dated 09.11.2001 was issued. As per recommendation of R.S.M.B., the applicant was granted disability pension @30% for life w.e.f. 09.02.2005 vide P.P.O. dated 04.10.2005. The applicant preferred an Appeal for benefit of rounding off disability pension from 30% to 50%, which was rejected by the respondents vide order 29.08.201, enclosed at Annexure No. A-1 of the Original Application. Presently the applicant is in receipt of 30% disability pension for life and has moved this Original Application for the benefit of rounding off of disability element.

3. Ld. Counsel for the applicant argued that since the applicant is already in receipt of 30% disability element for life on account of disability from "BRONCHIAL ASTHMA (493)" therefore in view of judgment in O.A. No. 328 of 2016, **Colonel Dharam Raj Singh (Retd)**, decided by Armed Forces Tribunal, Regional Bench, Lucknow on 07.09.2016 and Hon'ble Apex Court judgment in the case of **Union of India and Ors vs Ram Avtar & ors** (Civil appeal No. 418 of 2012 decided on 10th December 2014), the applicant is also entitled to benefit of rounding off of disability element @ 50% for life.

4. On the other hand, though Ld. Counsel for the respondents conceded receipt of 30% disability pension by the applicant but contended that the applicant is not entitled to the benefit of rounding off of disability pension on the ground that the applicant's services were not cut short as he was not invalided out on account of his disability. In the instant case

the applicant was discharged from service on completion of his terms of engagement, therefore, the Ld. Counsel claimed that he is not eligible for the benefit of rounding off.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. The only question which needs to be answered is that whether the applicant is entitled for the benefit of rounding off of his disability pension?

6. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014) wherein the Hon'ble Apex Court has nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision 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."*

7. In the instant case, there is no dispute that the applicant is in receipt of 30% disability pension for life. This fact has also been accepted by the respondents. Thus in view of the settled law on this matter we are of the considered opinion that the applicant is entitled the benefit of rounding off.

8. Learned counsel for the applicant further submitted that the larger Bench of Armed Forces Tribunal, Principal Bench, New Delhi vide order dated 01.12.2017 passed in O.A. No. 1439 of 2016 ***Ex Sergeant Girish Kumar vs. Union of India and others***, had enunciated that Armed Forces personnel who retired pre 01.01.1996 will be entitled to the arrears of broad banding with effect from 01.01.1996 and in case of those retired on or after 01.01.1996 will be entitled to arrears with effect from the date of their retirement. It was argued that in view of the decision of the Larger Bench in the case of ***Ex Sergeant Girish Kumar (supra)***, the applicant is

entitled to the benefit of rounding off and payment of arrears of disability pension from the date of his superannuation, i.e. 30.04.2002. In this regard, it may be noticed that Hon'ble the Supreme Court vide order dated 13.07.2018 passed in Civil Appeal Diary No 21811 of 2018, **Union of India through its Secretary & ors vs. Sgt. Girish Kumar** has stayed the decision of the Larger Bench in the case of **Ex Sergeant Girish Kumar (supra)**. For convenience sake, order dated 13.07.2018 is excerpted as under:

*"Leave to appeal granted.
Delay condoned.
Issue notice.
In the meanwhile, there shall be a stay of operation of the impugned judgment and order passed by the Armed Forces Tribunal.
However, learned Additional Solicitor General says that he will advise the Union of India to release the disability pension for a period of three years prior to the date of filing the original application before the Tribunal or the date of retirement as may be applicable."*

9. It may also be observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, para-9, Hon'ble Apex Court has observed:

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit

appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

10. As observed in the preceding paragraphs, delay in filing the O.A. has been condoned by this Tribunal, as such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability pension @ 30% for life to be rounded off to 50% for life may be made applicable to the applicant from three preceding years from the date of filing of the O.A.

11. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The impugned order dated 29.08.2017, enclosed as Annexure No. A-1 of the Original Application, is set aside. The applicant is entitled to the benefit of rounding off of disability pension from 30% for life to 50% for life with effect from three years prior to the date of filing of this Original Application. The date of filing of this Original Application is 21.03.2018. The respondents are 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. Default will invite interest @ 9% per annum till actual payment.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

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

Dated : December, 2018

AKD/-