

Court No.1(B)
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL,
BENCH, LUCKNOW

Original Application No. 184 of 2016

Tuesday this the 21st day of February, 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)

Hon'ble Lt Gen Gyan Bhushan, Member (A)

EX-Hav (No-14233749K) Meraj Ahmed Khan S/o Late Akhtar Hussain Khan, R/o Village – Mircha, P.O. - Dildar Nagar, Teh – Zamania, Ghazipur Pin - 232326.

..... **Applicant**

By Legal Practitioner: Col AK Srivastava (Retd), Advocate.

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi-110011.
3. The OIC Records Cops of Signals, Jabalpur.
4. The Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad (UP).

..... **Respondents**

By Legal Practitioner: Shri Namit Sharma, Learned Standing 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:-

“(a) Issue/Pass an order or direction of appropriate nature to the respondents to give the benefits of “rounding-off” of the disability pensionary benefits to the applicant as provided vide Government of India, Ministry of Defence letter No.1(2)/97/D(Pen-C) dated 31.01.2001 supported by the position held by the Supreme Court.

“(b) Issue/Pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case. Allow this application with costs.”

2. The factual matrix of the case, as agreed by both learned counsel for the applicant as well as learned counsel for the respondents, is that the applicant was enrolled in the Indian Army on 06.02.1980 and was discharged from service on 29.02.2004 (afternoon) in low medical category S1H1A2(P)P1E1 due to disability **“OSTEO ARTHRITIS (LT) KNEE (M-13)”**. The applicant is already in receipt of disability pension @ 20% for life. The applicant approached the respondents for benefit of rounding off of disability pension which has not been granted to him. Aggrieved, the applicant has filed this Original Application. The delay in filing of Original Application has been condoned vide order dated 29.07.2016.

3. Heard Col AK Srivastava (Retd), learned counsel for the applicant, Shri Namit Sharma, learned counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that the applicant is in receipt of disability pension @20% for life as per PPO No. S/075897/2003 (Army) dated 02.01.2004. However, as per Govt of India, Ministry of Defence, New Delhi letter No.1(2)/97/1/D(Pen-C) dated 31.01.2001, the applicant is entitled for the benefit of rounding off of the disability pension but it has not been granted to him. Learned Counsel for the applicant submitted that in catena of judgments, various benches of Armed Forces Tribunals have given the benefit of rounding off to the personnel who have retired after completion of their terms of engagement in low medical category.

5. **Per contra**, the learned counsel for the respondents has submitted that since the applicant was discharged from the service on fulfilling of his terms and engagement and was not invalidated out from service, he is not eligible for the rounding off of disability pension in terms of Government of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 as such has been correctly denied the benefit of rounding-off.

6. We feel to recall the judgment of 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** wherein Hon'ble The Apex Court 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.”

7. It is also observed that the Hon’ble Supreme Court in **Review Petition (C) No. 2688 of 2013 in Civil Appeal No. 5591/2006, U.O.I. & Another vs K.J.S. Buttar** has dismissed the Review Petition both on ground of delay as well as on merits on 21.01.2014.

8. In consonance with the Policy Letter No.1(2)/97/D (Pen-C) dated 31.01.2001 and in terms of the decision of Hon’ble The Apex Court in the case of **Union of India and Ors vs. Ram Avtar & ors Civil Appeal No 418 of 2012 dated 10th 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. We are of the view that in terms of Ram Avtar (supra) the petitioner is entitled to the benefit of rounding off.”

9. In view of the 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 to 50% for life.

10. The **Original Application No. 184 of 2016** succeeds and is allowed. The applicant is entitled for benefit of rounding off of disability pension from 20% to 50% for life from three years prior to filing of the Original Application i.e. 26.02.2016. The enhanced disability pension alongwith the arrears is directed to be disbursed to the applicant from the due date within four months from the date certified copy of this order is served upon the respondents. 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.

11. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)
Feb, 2017

(Justice D.P. Singh)
Member (J)
Feb 2017

RSP/-