

Court No. 1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, UCKNOW

Original Application No. 107 of 2018

Tuesday, this the 27th day of February, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

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

Ex.-No JC-339118-W Nb/Sub Radhe Shyam
S/o Shri Ramesh Chandra
R/o Vill- Bikapur, PO-Dariyabad,
Teh- Ramsanehighat,
Dist- Barabanki, UP.

..... **Applicant**

By Legal Practitioner – Shri Parijaat Belaura,
Learned counsel for the applicant

Versus

1. Union of India through the Secretary,
Ministry of Defence, New Delhi.
2. Chief of Army Staff Integrated Headquarter Ministry of
Defence, South Block, New Delhi.
3. The Principal Controller of Defence Accounts (Pension)
Draupadi Ghat, Allahabad(UP).
4. Officer in Charge, Bengal Engineer Groups Records,
PIN-908779, C/O 56 APO.

..... **Respondents**

By Legal Practitioner – Kaushik Chatterjee,
Learned Counsel for the Central Govt.

ORDER

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

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs :-

“(I) To quash order dated 20.01.2017 passed by opposite party no. 4.

“(II) To issue order or direction opposite parties to give the benefit of letter dated 31.01.2001 and round of his disability pension from 40% to 50% from the date of his retirement i.e., 01.03.2013.

“(III) To issue order or direction to opposite parties to pay arrears with interest @ 12% to the applicant.

“(IV) Any other relief as considered by this Hon’ble Tribunal is awarded favor of the applicant.

“(V) Cost of the application be awarded to the applicant.”

2. The undisputed facts, as averred by the learned counsel for both the parties are that the applicant was enrolled in the Army on 24.02.1987 and was discharged from service on 28.02.2013(afternoon) in the medical category H2 (Permanent) and is in receipt of 40% disability pension for life from the date of discharge i.e 01.03.2013. On the issue of Government of India letter regarding rounding of disability pension, applicant had approached to respondent No. 4 for giving the benefit of rounding of disability pension from 40% to 50% but the same was rejected by the respondent No. 4 vide letter dated 20.01.2017. Aggrieved, the applicant has filed this Original Application No. 107 of 2018.

3. Delay in filing the original application has been condoned vide order date 13.02.2018.

4. We have heard Shri Parijaat Belaura, learned counsel for the applicant and Shri Kaushik Chatterjee, learned counsel for the respondents and perused the record.

5. Learned counsel for the applicant submitted that the applicant is in receipt of 40% disability pension for life as per Corrigendum PPO No. S/CORR/15420/2014 dated 29.02.2016. However, as per Government of India, Ministry of Defence, New Delhi letter No. F-3(II)2010-D(Pen/Legal)-Pt-V dated 18.04.2016, the applicant is entitled for 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 and Hon'ble The Apex Court has nodded in agreement of such relief.

6. Learned counsel for the respondents has not filed counter affidavit. However, he submits that the PPO attached along with the Original Application indicates that the applicant is in receipt of 40% disability pension. He submitted that subject to verification of this fact, the case can be disposed of keeping in view various judgments of the Armed Forces Tribunals.

7. With the consent of learned counsel for both the parties, we have decided to dispose of this Original Application finally at this stage.

8. The law on rounding off of disability pension is well settled by the Hon'ble Supreme Court, keeping 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** reported in SCC 2011, XI, 429 and **Union of India & others vs. Ram Avtar & ors** (Civil Appeal No. 418 of 2012 dated 10th December 2014), 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 his disability to 50% from the existing 40%. However, since respondents have not filed a counter affidavit, they shall be at liberty to verify facts.

9. So far as entitlement of the applicant to receive arrears of disability pension is concerned, 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.”

10. The Original Application No. 107 of 2018 succeeds and is **allowed**. The impugned order dated 20.01.2017 passed by the respondents is set aside. The applicant is entitled for benefit of rounding off and shall be paid enhanced disability pension by rounding off from 40% to 50% for life from the date of discharge subject to verification of facts. The respondents are directed to pay the enhanced disability pension alongwith the arrears within 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.

No order as to costs.

(Lt. Gen. Gyan Bhushan)
Member (A)

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

Dated: February, 2018
RPM-