

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

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

**Original Application No. 546 of 2017**

Friday, this the 2<sup>nd</sup> day of February, 2018

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

Jogendra Kumar Sharma (728983-R) Ex-Sgt  
Son of Late Sri Khemraj Sharma  
Resident of village - Vazirdpur  
Post - Bhara (Jagner)  
Tehsil – Kheragarh  
Dist – Agra (UP) – 283115

.....Applicant

Ld. Counsel for : **Shri Anand Sharan, Advocate**  
the Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Air Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Directorate of Air Veterans, Air Headquarters, Subroto Park, New Delhi – 110010.
4. Dy. Controller of Defence Accounts (Air Force), New Delhi – 110010.
5. The Manager, State Bank of India (CPPC), Chandani Chowk, New Delhi (Pension Disbursing Authority).

.....Respondents

Ld. Counsel for the : **Dr. Chet Narain Singh,**  
Respondents **Ld. Counsel for Central Govt.**

**ORDER**

**“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

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

*“(a) Issue/pass an order to set aside the impugned communication denying the benefit of broad banding and rounding off of disability pension to the applicant.*

*(b) Issue/pass an order or direction to the respondents to extend the benefit of “Broad Banding” and “rounding off” of the disability pension benefits to the applicant to @ 50% w e f 14 Oct. 2008.*

*(c) Issue/pass an order or direction to the respondents to pay an interest @ 10% per annum on the arrears of enhanced war injury pension for the period from 14 Oct. 2008 to the date of disbursement to the applicant.*

*(d) Issue/pass an order or direction to the respondents to pass such other or further orders/directions as deemed fit in the facts and circumstances of the present case.”*

2. The undisputed facts, as averred by the learned counsel for both the parties, are that the applicant was enrolled in the Air Force on 09.02.1989 in medically fit condition and was discharged from service on his own request on 13.10.2008(afternoon). Before discharge from service, the applicant was examined by Release Medical Board and accepted the disability “**Bronchial Asthma**” as aggravated by service and assessed @ 30% for two years with effect from 14.10.2008. After completion of two years, the applicant was examined by a Review Medical Board and his disability was

assessed @ 20% for life with effect from 24.03.2010 vide Corrigendum PPO No. 08/14/B/Corr/DP/1769/2011. The applicant approached the respondents for the benefit of broad banding of disability pension from 20% to 50% but the same has been denied by Air Headquarters, Directorate of Air Veterans vide letter dated 09.01.2017. Aggrieved, the applicant has filed this Original Application. The delay in filing of Original Application has been condoned vide order dated 17.11.2017

3. We have heard Shri Anand Sharan, learned counsel for the applicant and Dr. Chet Narain Singh, learned counsel for the respondents and perused the record.

4. **Per Contra**, Learned Counsel for the respondents submitted that the disability due to the disease '**Bronchial Asthma**' has been assessed as 30% for two years and disability was considered as aggravated by Air Force service. The applicant was brought before Re-survey Medical Board after completion of two years and his disability was assessed as 20% for life with effect from 24.03.2010. As the applicant was discharged from service at his own request, he was not granted benefit of rounding off of disability pension as per Para 153 of the Pension Regulations for Indian Air Force, 1961 (Part-I).

5. Notwithstanding the above, the law on rounding off has been well settled by the Hon'ble Apex Court in the case of

**Union of India vs. Ram Avtar & Ors** in Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Relevant extracts are as follows :-

“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.”

6. In view of the above the Original Application deserves to be allowed.

7. 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.”*

8. Accordingly the Original Application No. 546 of 2017 is **allowed**. The impugned order passed by the respondents is set aside. The respondents are directed to grant disability pension to the applicant after rounding off @ 50% for life from the date of his discharge i.e. 14.10.2008 subject to verification. Respondents shall give effect to this order within a period of four months from the date of receipt of a certified copy of this order failing which the applicant shall be entitled to interest @ 9% per annum on the amount accrued from due date till the date of actual payment.

9. No order as to costs.

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

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

Dated: February, 2018  
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