

Court No.1(B)
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 196 of 2016

Wednesday this the 4th day of January, 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

No. JC-528337F-Ex-Sub/Clk & Hony Sub Maj
Hoshiyar Singh Mehra,
Son of Late Pan Singh Mehra
Resident H.No. A-518 Baldev Vihar,
Telibagh, Lucknow (U.P.) 226025.

..... **Applicant**

By Legal Practitioner Shri Parijaat Belaura, Advocate

Versus

1. Union of India through the Secretary,
Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarters, Ministry
of Defence, South Block, New Delhi.
3. The Principal Controller of Defence Accounts
(Pension) Draupadi Ghat, Allahabad (UP)
4. Officer in Charge, Records the Garhwal Rifles,
Lansdowne (UK)-246155.

..... **Respondents**

By Legal Practitioner Shri A.N. Tripathi, Learned Counsel
for the Central Government

ORDER

“Hon’ble Air Marshal Anil Chopra, 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) To issue order or direction opposite parties to grant disability pension @ 50% in place of 30% giving benefit of letter dated 31/01/2001 from the date of his retirement.*
- (II) To issue order or direction to opposite parties to pay arrears with interest @ 12% to the applicant.*
- (III) Any other relief as considered by this Hon’ble Tribunal is awarded in favour of the applicant.”*

2. The applicant is in receipt of disability pension and he has filed this Original Application No. 196 of 2016 for the relief of rounding off of the disability pension. The factual matrix of the case, 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 30.03.1976 and was discharged from service on 31.12.2001 (afternoon) on fulfilling the terms and conditions of the service under Army Rule 13 (3) 1 (i) (a) in low medical category P2 (Permanent) due to disability **“CAD (INFRO POSTERIOR WALL MI) PTCA AND**

STENT TO LCX AMD RCA DONE-447”, after rendering 26 years of service. The applicant has been getting disability pension since his discharge and subsequent reassessment of medical disability was assessed as 30% for life and accordingly PPO dated 11.04.2004 has also been issued. 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 11.08.2016.

3. Heard Shri Parijaat Belaura, learned counsel for the applicant, Shri A.N. Tripathi, learned counsel for the respondents and perused the record.

4. Learned counsel for the applicant submitted that the applicant has been in receipt of disability pension since his discharge from 01.01.2002 and has been granted 30% disability pension for two years and his disease was declared as not attributable to but aggravated by military service. On review of his disability by Re-Survey Medical Board held on 08.08.2003, his disability was assessed as 30% for life and accordingly he is in receipt of 30% disability pension as per PPO dated 11.04.2004. 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 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.

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 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.

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. & ANR 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. We find that 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 completion of tenure of engagement. These appeals were dismissed. We feel to recall the judgment and order of Hon’ble The Apex Court 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 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."

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%.

10. The **Original Application No. 196 of 2016** succeeds and is allowed. The applicant is entitled for benefit of rounding off and shall be paid disability pension by extending the benefit of rounding off @ 50% for life from three years prior to filing of the Original Application i.e. 15.01.2016. 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 pay the amount to the applicant within four months, they will have to pay interest @ 9% from due date till the date of actual payment.

11. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

Dated : Jan, 2017
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