

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 818 of 2023**Tuesday, this the 9th day of January, 2024**Hon'ble Mr. Justice Anil Kumar, Member (J)****Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

Ex Sub Rajendra Kumar
 S/o Shri Yash Pal Singh
 Vill – Raj Vihar Jagjitpur, PO – Kankhal
 Tehsil – Jawalapur, Distt – Haridwar – 249408

..... Applicant

Ld. Counsel for the Applicant: **Shri Amit Asthana &
 Ms. Alka Saxena, Advocates**

Versus

1. Chief of the Army Staff, Sena Bhawan, New Delhi-110011.
2. Commanding Officer, 152 Inf Bn TA (SIKH), Pin – 934352, C/o 56 APO.
3. Records the Sikh Regiment, SRC Ramgarh Cantt, Pin – 908762, C/o 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad.
5. Chief Manager, Punjab national Bank (CPPC) Halwasia, Ist Floor, Hazratganj, Lucknow (UP) – 226001.

..... Respondents

Ld. Counsel for the Respondents : **Shri Vishwesh Kumar,
 Central Govt Counsel**

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(a) Issue/pass an order directing the respondents to consider case of the applicant for grant of the benefit of rounding off of disability pension with effect from the date of grant of disability

pension, i.e. 30.04.2014 and provide the same along with arrears and interest.

(b) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(c) Allow this Original Application with cost.”

2. Briefly stated facts of the case are that the applicant was enrolled in 152 Infantry Battalion (TA) SIKH on 14.06.1993 and discharged from service with effect from 30.04.2014 (AN) in low medical category. The Release Medical Board assessed his disabilities, (i) 'DIABETES MELLITUS TYPE-2' @ 20% for life and considered it as aggravated by military service and (ii) 'OBESITY' @ 1-5% as neither attributable to nor aggravated by military service (NANA). Accordingly, P.P.O. No. S/20445/2015 was issued by the Principal Controller of Defence Account (Pension), Allahabad. Presently the applicant is in receipt of 20% disability element of pension w.e.f. 01.05.2014 and has moved this Original Application for grant of benefit of rounding of disability pension from 20% to 50% for life from the next date of discharge from service.

3. Learned counsel for the applicant argued that applicant is already in receipt of 20% disability element for life, therefore, in view of the 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), and Govt. of India, Ministry of Defence letter dated 31.01.2001, the applicant is also entitled to the benefit of rounding off of disability element @ 50% for life from the next date of discharge from service, i.e. w.e.f. 01.05.2014.

4. On the other hand, though Ld. Counsel for the respondents conceded receipt of 20% disability element of pension by the applicant but contended that the applicant is not entitled to the benefit of rounding off of disability pension from the next date of discharge from service, i.e. w.e.f. 01.05.2014, rather he is entitled to the benefit of rounding off w.e.f. 01.01.2016 as per Govt. of India, Ministry of Defence letters dated 05.09.2017 & 23.01.2018 and PCDA (P) Prayagraj Circular No. 596 dated 09.02.2018.

5. Heard learned counsel for the parties and perused the material placed on record.

6. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of the 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. Consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

8. In the instant case, there is no dispute that applicant is in receipt of 20% disability element for life as this fact has been accepted by the respondents. In view of the settled law on this matter, we are of the considered opinion that the applicant is entitled to the benefit of rounding off from 20% to 50% for life from 01.01.2016 as per Govt. of

India, Ministry of Defence letter dated 05.09.2017 & 23.01.2018 and PCDA (P) Prayagraj Circular No. 596 dated 09.02.2018 and not from the next date of discharge from service as prayed by the applicant.

9. In view of the above, the Original Application is **partly allowed**.

The applicant is entitled to the benefit of rounding off of disability element from 20% for life to 50% for life from 01.01.2016. The respondents are directed to grant benefit of rounding off of disability element from 20% to 50% for life from 01.01.2016, if not already granted and pay arrears accordingly. 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.

10. No order as to costs.

11. Misc. Application(s), pending if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated: January, 2024
SB

(Justice Anil Kumar)
Member (J)