

Court No.1

Reserved Judgment

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

Original Application No. 123 of 2014

Tuesday this the 14th day of July, 2015

Hon'ble Mr. Justice S.C. Chaurasia, Member (J)

Hon'ble Air Marshal Anil Chopra, Member (A)

No. 2667615-F Ex-Hav Jagvir Singh
S/o Shri Ami Chand
R/O House No. B-310, Sanjay Vihar, Awas Vikas Colony,
Meerut Road, Hapur, Dist : Ghaziabad (UP) Pin : 245101

..... Applicant

By Legal Practitioner Shri Shailendra Kumar Singh,
Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi- 110011
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi- 110011.
3. OIC Records, The Grenadiers Record, Jabalpur (MP) – 482001.
4. P C D A (Pensions), Draupadi Ghat, Allahabad (UP) – 211014.

..... Respondents

By Legal Practitioner Shri Mukund Tewari, Standing
Counsel for the Central Government

ORDER

“Hon’ble Mr. Justice S.C. Chaurasia, Member (J)”

1. The instant Original Application, under Section 14 of the Armed Forces Tribunal Act, 2007, has been filed on behalf of the applicant and he has claimed reliefs as under :

- “(A) To quash and set aside the order passed by Respondent No. 3, communicated to the applicant vide their letter dated 05 Nov 2011 (Impugned Order & Annexure No. A-1).*
- (B) To issue order or direction to the Respondents to round off the disability pension of the applicant from 20% to 50% in terms of Govt of India (MoD) letter dated 31 Jan 2001 from the date of discharge i.e., 01 Sep 1998.*
- (C) Any other relief as considered deemed just and proper by the Hon’ble Tribunal in the nature and circumstances of the instant case be awarded in favour of the applicant.*
- (D) Cost of the application be awarded to the applicant.”*

2. The applicant’s case, in brief, is that he was enrolled in the Indian Army (The Grenadiers Records) on 08.03.1976 as Sepoy and was discharged from service on 31.08.1998 on completion of service in the rank of Havildar after rendering 22 years, 05 months and 23 days of service. The Photostat copy of the Discharge Certificate has been enclosed as Annexure A-2. The Release Medical Board

(RMB) held prior to discharge of the applicant had opined that the applicant was suffering from disability of 20% for COMPRESSION FRACTURE LV-1, LV-2 EFFECTSON N-806 E-816 with effect from 14.10.1996 and it was attributable to service. The Respondent No. 3 issued letter No. 266715/09/D-Pen dated 09.03.1999 (Annexure A-3) to the Treasury Officer, Ghaziabad for payment of disability element @ Rs. 90/- per month to the applicant for the period 01.09.1998 to 22.06.2003 vide PPO No. DE/004586/1998 dated 09.02.1999. The award of disability element was in addition to service pension notified in PPO No. S/060587/98 dated 23.08.1998. The Respondent No. 3 issued letter No. 2667615/SR/D-Pen dated 31.05.2001 (Annexure A-4) to the Treasury Officer, Ghaziabad for payment of revised rate of disability element @ Rs. 310/- per month to the applicant for the period 01.09.1998 to 22.06.2003 vide PPO No. DE/corr/026331/2001 dated 17.05.2001. The Respondent No. 3 vide his letter No. 2667615/11/RA/D-Pen dated 30.01.2002 (Annexure A-5) requested the Treasury Officer, Ghaziabad for payment of revised rate of disability pension to the applicant at the earliest. The Respondent No. 3 vide his letter No. 2667615/RA/X/D-Pen dated 22.03.2003

(Annexure A-6) communicated to the applicant that he is due for Re-Survey Medical Board on 22.06.2003 and payment of disability pension would depend upon the report of Re-Survey Medical Board. The applicant was hospitalized at MH Meerut on 16.04.2003 and his Re-Survey Medical Board was conducted on 19.04.2003. The medical authorities opined that his disability remained static. The applicant was discharged from MH Meerut on 21.04.2003 vide Discharge Slip, Annexure A-7. Thereafter, Respondent No. 3 vide his letter No. 2667615/R/D Pen dated 23.06.2003 (Annexure A-8) communicated to the Respondent No. 4 that the applicant's disability has been re-assessed at 20% for life being attributable to service. The Respondent No. 3 vide his letter No. 2667615/RA/X/D-Pen dated 13.02.2004 (Annexure A-9) communicated to the applicant that his disability pension with effect from 19.04.2003 has been reassessed @ 20% for life and PPO is being issued accordingly. The applicant's disability pension was enhanced @ Rs. 702/- per month with effect from 01.01.2006, as per the recommendation of 6th CPC. The applicant submitted a representation on 22.10.2011 to the Respondent No. 3 for granting benefit of rounding off to the applicant as per Govt of India (MoD) letter dated

31.01.2001 as well as the decision of the Hon'ble Supreme Court dated 31.03.2011 rendered in Civil Appeal No. 5591 of 2006, K.J.S. Buttar vs. Union of India & another, but the same was rejected vide impugned order dated 05.11.201 (Annexure A-1) on the ground that he has been discharged from service on completion of initial engagement and hence, he is not entitled to get the benefit of the rounding off. The applicant is entitled to get the benefit of rounding off the disability from 20% to 50% in terms of Govt of India (MoD) letter dated 31.01.2001 from the date of discharge. Under these circumstances, the impugned order dated 05.11.2011 (Annexure A-1) deserves to be quashed.

3. The respondents have filed the counter affidavit and have admitted that the applicant was enrolled in the Army on 08.03.1976 and discharged from service on 31.08.1998 under Rule 13 (3) Item III (i) of the Army Rules on completion of terms of engagement of service, being in Low Medical Category CEE (Permanent) after rendering 22 years, 05 months and 23 days of service in the Army. The respondents have also admitted other facts as narrated by the applicant with regard to payment of disability pension to him. It is also not disputed that the applicant's disability has been re-assessed @ 20% for life with effect from

19.04.2003 and considered as attributable to the military service. The applicant's representation dated 22.10.2011 has been replied vide Grenadiers Records letter No. 266761/RA/D-Pen dated 05.11.2011 that he has been discharged from service on completion of his terms of engagement and thus rounding off facility is not applicable to him. In terms of Govt of India. Ministry of Defence letter No. 10(01)/D(Pen/Pol)/2009/Vol-II dated 19.01.2010 and PCDA (P), Allahabad circular No. 435 dated 11.05.2010, personnel invalided out/deemed invalided out, being placed in low medical category other than AYE/SHAPE-1, are only eligible for the benefit of rounding off disability pension. Besides it, the Hon'ble Supreme Court, in the case of Union of India vs. NK Narikar (Civil Appeal No. 8433 of 2009) decided on 24.05.2012, has held that the benefit of broad banding can be extended to those personnel whose tenure of service got reduced due to invalidment on account of disability or war injury. In the instant case, the applicant was retained in service despite Low Medical Category CEE (Permanent) and discharged after completing the initial period of engagement and hence, he is not entitled to the benefit of

the rounding off facility. The Original Application deserves to be dismissed with cost.

4. The applicant has filed the rejoinder affidavit and has asserted his previous version.

5. The counter affidavit and the rejoinder affidavit have been exchanged between the parties.

6. We have heard Shri Shailendra Kumar Singh, learned counsel for the applicant and Shri Mukund Tewari, learned counsel for the respondents and perused the record.

7. It is not disputed that the applicant's disability has been re-assessed @ 20% for life with effect from 19.04.2003 and he is getting the disability pension accordingly. The applicant's version is that he is entitled to get the benefit of rounding off of disability from 20% to 50% in the light of the Govt of India (MoD) letter dated 31.01.2001. Whereas, the respondents' version is that the applicant is not entitled to get the benefit of the rounding off facility, because, he has been discharged from service on completion of the terms of engagement. This controversy has been set at rest by the recent judgment of the Hon'ble Supreme Court delivered on 10.12.2014 in the Civil Appeal No. 418 of 2012 Union of India & others vs. Ram Avtar with other Civil Appeals. The relevant

paragraphs 4, 6 & 7 of the judgment of the Hon'ble Supreme Court may be reproduced as under :

“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.

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. In view of the principles of law laid down by the Hon'ble Supreme Court in the case of Union of India vs. Ram Avtar (supra), it is crystal clear that the applicant is also entitled to get the benefit of rounding off of disability as it was attributable to military service, although, he was discharged from service after completion of the terms of engagement.

9. In view of the aforesaid discussion, the Original Application No. 123 of 2014, No. 2667615-F Ex-Hav Jagvir Singh vs. Union of India & others is allowed partly and the impugned order dated 05.11.2011 (Annexure A-1) is hereby quashed. The applicant is entitled to get the rounding off of disability from 20% to 50% with effect from 03.10.2010 i.e. three years prior to the filing of the instant Original Application alongwith interest @ 9% per annum on the amount of arrears. The respondents are directed to make payment to the applicant within four

months from the date of receipt of copy of the judgment.

Parties shall bear their own costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice S.C. Chaurasia)
Member (J)

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