

Court No.1

Reserved Judgment

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

Original Application No. 467 of 2012

Wednesday this the 3rd day of June, 2015

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

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

Ex Nk Pramod Kumar Sahu (No 15378068Y)
Son of Shri Shivanand Sahu,
Resident of Village : Chhatabar,
Post : Malti Gunder Pur, Distt: Sambalpur,
PIN- 768116, State : (Orissa)

..... Applicant

By Legal Practitioner Shri R. Chandra, Advocate

Versus

1. Union of India,
through, the Secretary,
Ministry of Defence, Government of India,
New Delhi
2. The Officer- In-Charge
The Records Signals
Jabalpur (MP)
3. Principal Controller of Defence Accounts
(Pension), Draupadi Ghat,
Allahabad (UP)

..... Respondents

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

ORDER

“Hon’ble Air Marshal Anil Chopra, Member (A)”

1. The Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, claiming the following reliefs:

- “(1) This Hon’ble Tribunal may graciously be pleased to direct the respondents to give the benefit of “rounding off” to the applicant in pursuance of the policy letter dated 31.01.2001 issued by the Ministry of Defence and in the light of the judgment and order dated 04.08.2010 passed by the Tribunal, Chandigarh and judgment, order dated 31.03.2011 passed by Hon’ble Supreme Court and order dated 19.04.2012 passed by this Hon’ble Tribunal.*
- (II) This Hon’ble Tribunal may graciously be pleased to direct the respondents to give the aforesaid benefit and pay 50 % disability pension in place of 20 % with effect from 01.01.2010 alongwith arrears of disability pension with interest at the rate of 18% per annum.*
- (III) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*
- (IV) Award the cost of the O.A. to the applicant.”*

2. The factual matrix of the case is that the applicant was enrolled in the Indian Army in Corps of Signals on 29.02.1992 as Sepoy and was discharged in the rank of Naik on 31.12.2009. He was granted service pension of the

rank of Naik w.e.f. 01.01.2010 vide PPO No. S/035134/2009 (Army) dated 26.10.2009 (**Annexure No. A-1**).

3. On 04.08.2011, the applicant was granted disability pension from the date of discharge w.e.f. 01.01.2010 for life. His disability was assessed at 20% and he was getting the disability pension vide PPO No. DE/012307/2011 (Army) dated 01.11.2011 (**Annexure No. A-3**).

4. Now, the Government of India, Ministry of Defence has directed The Chief of the Army Staff to implement the Government Order No. 1 (2)/97/1/D (Pen-C) dated 31.01.2001 (**Annexure No. A-4**) for rounding off the disability pension to 50% for those who were granted less than 20%. The applicant is getting 20% disability pension for life but the benefit of 'rounding off' has not been given to the applicant. When the applicant approached to respondent No. 2, he was informed that since he has been discharged from service on completion of service of engagement, the benefit of the rounding off cannot be given to him. Copy of his representation dated 10.11.2011 is enclosed as **Annexure No. A-5**.

5. The matter has already been settled by the Armed Forces Tribunal, Regional Bench, Chandigarh, vide their

order dated 04.08.2010, passed in O.A. No. 329 of 2010 (Lt. General Vijay Oberoi versus Union of India and others). The Tribunal has struck down the provisions contained in paragraph 8.2 of Government of India letter dated 31.01.2011 as they relate to non-applicability in the case of the personnel discharged from service on attaining the age of superannuation .

6. Hon'ble Apex Court in Civil Appeal No. 5591 of 2006 (KJS Buttar Vs Union of India and others) decided on 31.03.2011 (**Annexure No. A-6**), and order of this Hon'ble Tribunal in O.A. No. 29 of 2012 Shiv Pyare Singh versus Union of India and others, order dated 19.04.2012 (**Annexure No. A-7**) both have taken similar view.

7. The case of the applicant is identical. He is also entitled for the benefit of the judgment and order passed by the Hon'ble Supreme Court as well as by the Armed Forces Tribunals.

8. Through the Counter Affidavit, the respondents have submitted that the applicant was enrolled in the Army (Corps of Signals) on 29.02.1992 and discharged from service on 31.12.2009 under Army Rule 13 (3) item III (iv) before completion of tenure of service, on compassionate ground at his own request. He has completed 16 years and

307 days of service in the army and is in receipt of the service pension.

9. At the time of the discharge, the applicant was in low medical category due to disability **“PIVD L5-S1 ICD NO M-51”**. Therefore, he was physically examined by the duly constituted Release Medical Board on 23.10.2009 at 176 MH, which regarded his disability as neither attributable to nor aggravated by military service and disablement was assessed @ 20% for life and net assessment qualifying for disability pension at Nil %.

10. The applicant submitted the first appeal on 08.08.2010 to First Appellate Committee and the disability was considered to be aggravated by military service and the degree of disablement was viewed at 20% for life w.e.f. 01.01.2010. PCDA (P) Allahabad has sanctioned his disability pension at 20% w.e.f. 01.01.2010.

11. Under the provisions of the Government of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001, rounding off the benefit of the disability pension is applicable to those personnel who were invalided out of service or discharged from service before completion of terms of engagement/service/age limit on medical ground on or after 01.01.1996. Since the applicant

was discharged from service at his own request on compassionate grounds, it debars the applicant to become eligible for rounding off benefits due to policy constraint.

12. Hon'ble Supreme Court has laid down in case of Union of India versus NK Narikar vide order dated 24.05.2012 that the benefit of the broad banding can be given to only those personnel who have been invalided out of service. Since the applicant was discharged from service on compassionate ground at his own request, case of the applicant does not come under this category. The Original Application lacks substance and deserves to be dismissed.

13. Heard the learned counsel for both the parties and perused the record.

14. During arguments, the learned counsel for the applicant placed reliance on the Hon'ble Apex Court judgment in civil appeal No.418 of 2012, Union of India and others vs. Ram Avtar along with large number of other appeals against the judgments allowing rounding off of disability pension for those who had completed their terms of engagement. Vide said judgment, the Hon'ble Apex Court has rejected the appeals against the judgments

allowing rounding off benefit for those who had completed their terms of engagement.

15. The respondents' counsel continued to state that as per the MoD letter dated 31.01.2001, the applicant was not entitled to the benefit of rounding off.

16. It is clear that large number of judgments have been passed by various Regional Benches of the Armed Forces Tribunal allowing rounding off of disability pension for those who had completed their terms of service engagement.

17. More recently, the Hon'ble Apex Court in civil appeal No.418 of 2012, Union of India and others vs. Ram Avtar along with large number other appeals, through its judgment dated 10.12.2014 has ruled 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.

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 week' time from today to the appellant(s) to comply with the orders and directions passed by us."*

18. Through the aforesaid judgment, the Hon'ble Apex Court has made it very clear that all those entitled to the disability pension, whether or not, an individual has retired on attaining the age of superannuation or on completion of his term of engagement, is entitled to the benefit of rounding off of the disability pension.

19. In view of the aforesaid discussion, we are of the view that the applicant has made out a case for grant of the part of relief as claimed by him. The Original Application

No. 467 of 2012 Ex Nk Pramod Kumar Sahu Vs. Union of India and others is allowed, partly. The applicant will be entitled for rounding off of disability pension to 50% from 29.10.2009 i.e. three years prior to the filing of the instant Original Application along with interest @ 9% per annum. The payments be made within four months of receipt of copy of this judgment by Respondents. The parties shall bear their own costs.

(Air Marshal Anil Chopra)
Member (A)

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

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