

Court No.1

Reserved Judgment

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

Original Application No.115 of 2014

Tuesday this the 19th day of May, 2015

Hon'ble Mr. Justice S.C. Chaurasia, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

No. 15358600Y Ex Havildar Rakesh Babu
S/o Late Shri Ram Dutt,
House No 26, Laxmi Palace,
Phase-III, Deori Road,
Agra-282001 (UP)

..... 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. Chief of the Army Staff,
Integrated Headquarters of Ministry of
Defence (Army) DHQ Post Office,
NEW DELHI
3. The Officer In-charge
Signal Records
Jabalpur (M.P.)
4. The Chief Controller Defence
Accounts, Draupadi Ghat
Allahabad (UP)

..... Respondents

By Legal Practitioner Shri Ram Sakal Mishra, 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:

“(I). 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 judgments and orders passed by the Hon’ble Tribunals and order dated 31.03.2011 passed by Hon’ble Supreme Court.

(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 11.10.2011 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.”

2. The factual matrix of the case is that the applicant was enrolled in the Army in Signal Corps on 21.03.1987 as a Sepoy and further, he was promoted to the rank of Havildar and served in various units in field and peace areas.

3. The applicant was invalided out locally from service by an Invaliding Medical Board. His medical category was

assessed as P5 (Permanent) for Type-I Diabetes in first time without putting him in temporary medical category.

4. The applicant served in the Army for 24 years, 06 months and 24 days. He was granted two years extension of service and due to invaliding out, the applicant's 17 months and 6 days service was shortened. The photocopy of Invaliding Medical Board proceedings is annexed as **Annexure No A-2**. The applicant has been granted 20% disability w.e.f. 11.10.2011 for life vide CDA (P) Allahabad PPO No. DE/010086/2013 dated 13.02.2013 (**Annexure A-3**). The applicant is getting disability pension for 20% for life, but the benefit of 'rounding off' as per Ministry of Defence letter dated 31.01.2001 is not being given to him.

5. The Government of India, Ministry of Defence has issued letter No. 1/2/97/I/D (PN-C) dated 31.01.2001 regulating disability pension. It has provided in Para 7.2 of this letter that where an Armed Forces personnel is invalided out under circumstances mentioned in Para 4.1 of the letter, the extent of disability or functional incapacity shall be determined in accordance with the manner provided in the said Para for computing the disability element. It has been provided that if the percentage of

disability as assessed by Invaliding Medical Board is less than 50 percent, the percentage to be reckoned for computing disability element will be 50 percent. In para 4.1, the disability due to causes which are accepted as attributable to or aggravated by military service, as determined by the competent medical board will attract the provisions of Para 7.2. It has further been provided in the letter dated 31.01.2001 that the provisions of the letter would be applicable only for the armed forces officer and personnel below officer rank retiring, invaliding or dying in harness on or after 01.01.1996. The photocopy of the letter dated 31.01.2001 is annexed as **Annexure No. A-4**.

6. As per the opinion of the Medical Board, since the disability suffered by the applicant is certified to be attributable to military service and it has been assessed at 20 percent for life, the applicant has been awarded disability pension. The applicant, in view of the policy letter dated 31.01.2001, was entitled for reckoning of the disability to 50 percent, however, the said benefit has been denied to the applicant. As the representation dated 09.04.2013 submitted by the applicant was not replied, the counsel for the applicant sent a legal notice to respondent No 3 on 28.06.2013. The request of the applicant has been

turned down by respondent No 3 vide communication dated 04.08.2013 (**Annexure No. A-1**) on the ground that the applicant is not entitled to rounding off/broad banding of disability element benefits because he was discharged from service after completion of the term of his engagement. But real fact is that applicant was invalided out from service before 17 months and 6 days and hence, the applicant is entitled to the said benefits. Photocopy of the representation dated 09.04.2013 and legal notice dated 28.06.2013 are enclosed as **Annexure Nos. A-5** and **A-6**, respectively.

7. It is submitted that the aforesaid decision given by respondent No. 2 is absolutely illegal and arbitrary. As per the provisions of Para 179 of the Pension Regulations for the Army 1961, an individual retired/discharged on completion of service limits or on completion of term 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 percent or more, and

service element, if the degree of disability is less than 20 percent. The service pension/service gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be. 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 on the date of the first removal from duty on account of that disease.

8. The applicant has been invalided out locally from service prior 17 months 6 days service, whereas in case of an individual discharged on fulfilling the term of his engagement, his unwillingness to continue in service beyond the period of the engagement should not affect his entitlement to the disability element under the provisions of the above regulation. Hence, the applicant is entitled for the disability pension at the rate of 50 percent w.e.f. the date of discharge. The said controversy has been decided by the Armed Forces Tribunal, Regional Bench, Chandigarh in OA No. 329/2011; Lt General Vijay Oberoi Versus Union of India and Others. Further, the issue has already been concluded by the decisions rendered by the Hon'ble Apex

Court as well as the various benches of the Armed Forces Tribunal, including this Bench. Photocopy of the decision rendered by the Hon'ble Supreme Court in the case of KJS Buttar V/s Union of India and another and copy of the order rendered by this Bench of the Tribunal in the O.A. No. 69 of 2012, Hav (Honorary Naib Subedar) Ram Milan Singh versus Union of India and others are enclosed as **Annexure Nos. A-7 and A-8**, respectively. Since the applicant has been denied the benefit of the above mentioned letter dated 31.01.2001, illegally, the instant Original Application has been filed.

9. Through a counter affidavit, the respondents have submitted that the applicant was invalided out from service w.e.f. 10.10.2011 under the Army Rule 13 (3) item III (i) read in conjunction with Sub Rule 2A on completion of service/age limit. The applicant has rendered 24 years and 204 days of service in the Army. The invaliding Medical Board of the applicant was held on 08.09.2011 at Base Hospital, Delhi Cantt-10, which had regarded his disability 'TYPE -1 DIABETES MELLITUS' as attributable to military service and assessed @ 20% for life. Photostat copy of the Medical Board proceedings is enclosed as **Annexure No. CR-1**. The PCDA (P), Allahabad, after

adjudication of the disability pension claim has notified the Disability Pension with effect from 11.10.2011 at @ 20% for life vide PPO No. DE/010086/2013 dated 13.02.2013. A Photostat copy of the PPO dated 13.02.2013 is enclosed as **Annexure No. CR-2**).

10. Legal notice dated 28.06.2013 served by Shri R. Chandra, Advocate on behalf of the applicant was suitably replied by Signals Records vide letter No. P/ 5492/ LC/ LN/ T-3 dated 04.08.2013. (**Annexure No. CR-3**).

11. Under the provisions of Government of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001, personnel who have been invalided out from Military service on medical ground on or after 01.01.1996 are only entitled for the rounding off benefits. However, rounding off facilities have also been extended to the Armed Forces Personnel, who were invalided out of service prior to 01.01.1996, with effect from 01.07.2009, who are in receipt of Disability Pension as on 01.07.2009 vide Ministry of Defence letter No. 10(01)/ D(Pen/ Pol)/ 2009/ Vol-II dated 19.01.2010. The Hon'ble Supreme Court has also laid down in the case of Union of India versus Nk Narikar in Civil Appeal No. 8433-8434 of 2009 vide order dated 24.05.2012 that benefit of broad banding can be

given only to those persons who stood invalided out of service because their tenure of service got cut due to invalidment on account of disability or war injury. Since the applicant was invalided out from service after completion of his term of engagement, it debars him to become eligible for rounding off benefits due to policy constraints. The Original Application lacks substance and deserves to be dismissed.

12. Through the rejoinder affidavit, the applicant has stated that the respondents have denied the rounding off benefits by quoting the case of Civil Appeal No 8433-8434 of 2009; Union of India and others Versus NK Narikar, it is submitted that NK Narikar's case can very well be said to be judgment "Sub-Silentio", in as much as it was rendered because all true and correct facts were not brought to the notice of Hon'ble Supreme Court by the respondents and the petitioner therein, who appeared in person, was handicapped for want of proper and complete information and documents. Under these circumstances, it cannot be said to be a precedent within the meaning of Art 141 of the Constitution of India. Furthermore, the judgment passed by the Hon'ble Supreme Court in Capt K J S Buttar Vs UOI dated 31.03.2011, followed by UOI Vs Paramjeet Singh,

dated 04.04.2011, the Hon'ble Supreme Court has held that broad banding/rounding off, needed to be extended to those also, who superannuated or released on completion of their term of service. It is further submitted that the contention of the respondents that facility of 'rounding off' is being extended to only invalidated out personnel is not only fallacious but also devoid of merit and reasoning. The genesis of the impugned policy letter dated 31.01.2001 emanates from the letter dated 03.02.2000 vide OM No. 45/22/97-P & PW (C), which was issued by Public Grievances Department of Pension and Pension Welfare, Govt. of India, does not stipulate any such embargo that the facility of conferment of special benefit of the rounding off or Broad banding of disability percentage will be restricted to invalidated out persons only. Copy of the letter is attached as **Annexure No. R-1.**

13. Another detailed and exhaustive judgment in Lt Gen Vijay Oberai Vs UOI & Ors (OA No. 329/2010) dated 04.08.2010 by AFT (RB) Chandigarh, squarely negates their contention. Further the case of Gen Oberai, though appealed in the Hon'ble Supreme Court by the UOI, it has declined to stay the operation of the said judgment.

14. During arguments, the learned counsel for the applicant referred to 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. Heard the learned counsel for both the parties and perused the record.

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

18. 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 pensions.

8. This Court grants six week' time from today to the appellant(s) to comply with the orders and directions passed by us.”

19. 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.

20. In view of the aforesaid discussion, we are of the view that the applicant has made out a case for grant of relief as claimed by him. The Original Application No. 115 of 2014, No.15358600Y Ex Havildar Rakesh Babu Vs. Union of India and others is allowed and the order No. P/5492/LC/LN/T-3 dated 04.08.2013 (Annexure No. A-1) is quashed. The applicant will be entitled for rounding off of disability pension to 50% from the date of discharge ie. 11.10.2011. The payments be made within four months of receipt of copy of this judgment by Respondent No. 3. The parties shall bear their own costs.

(Air Marshal Anil Chopra)
Member (A)

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

sry