

Court No.1

Reserved Judgment

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

Original Application No. 481 of 2012

Friday this the 29th day of May, 2015

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

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

142296636 W Ex Nayak Jagehswar Singh
son of Late Sri Ram Pal Singh
resident of near SV Rozajan School Jai Narain Verma Road
Post Fatehgarh Farrukhabad

..... Applicant

By Legal Practitioner Shri P.K. Shukla, Advocate

Versus

1. Union of India through its Secretary Ministry of Defence (Army) (Solid Block DHQ,OCI Civil Secretariat) New Delhi.
2. PCDA Pension Draupadi Ghat Allahabad (U.P.)
3. OIC Records Signal Jabalpur M.P.

..... Respondents

By Legal Practitioner Shri D.S. Tiwari, 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). Issue an order or directions in the nature of certiorari for quashing the impugned order dated 20.10.2012 passed by the opposite party no. 2 as contained in annexure no. 1 to the petition.*
- (II) To issue an appropriate order or directions for commanding the opposite party to pay the Rounding off benefit to the petitioner in pursuance of the policy letter dated 31.1.2011 issued by the Ministry of Defence and in the light of the judgment and order dated 4.8.2010 passed by the Hon’ble Tribunal Chandigarh and the judgment and order dated 31.3.2011 passed by the Hon’ble Supreme Court of India as referred hereinabove.*
- (III) To issue an appropriate order or directions for commanding the opposite party to give the aforesaid benefit and pay 50% disability pension in place of 30% with effect from 1.3.2005 along with the arrears of disability pension with interest at the rate of 12% per annum.*
- (IV) Issue any other order or directions which this Hon’ble tribunal may deem fit just and proper in the circumstances of the case be also awarded to the petitioner against the opposite parties.*

(V) *To award the cost of this O.A. to the petitioner against the opposite parties.”*

2. The factual matrix of the case is that the petitioner was enrolled in the Army and commissioned on 07.05.1977 in Regt of Signals. During the service, he was posted at various places and finally superannuated on 01.10.1999. At the time of Release Medical Board, his disability was assessed at 30% for life and the Medical Board found the disease as aggravated by military service. The PPO No. D/RA/22716/2004 is enclosed as **Annexure No. 2.**

3. The applicant made a representation on 27.03.2011 for rounding off benefit, but the same was rejected and communicated to him through a letter dated 18.07.2011 (**Annexure No. 3**).

4. The respondents have wrongly interpreted the Paras 173 & 179 of the Pension Regulations for the Army 1961. The applicant has referred to the Hon'ble Supreme Court judgment dated 31.03.2011 rendered in **Civil Appeal No. 5591 of 2006, KJS Buttar versus Union of India & others**, which has also held that personnel, who retired/invalided out even before 01.01.1996 and in receipt of disability pension, are entitled to the benefit of 'rounding off' w.e.f. 01.01.1996. (Copy of Apex Court judgment

dated 31.03.2011 is enclosed as **Annexure No. 4**). Following the aforesaid decision, this Bench has already given the relief of rounding off in a bunch of 85 cases vide order dated 06.04.2011 passed in T.A. No. 1077 of 2010 (Jai Singh versus Union of India & others along with other connected matters).

5. The matter has also been settled by the Chandigarh Bench of the Armed forces Tribunal vide order dated 04.08.2010 passed in O.A. No. 329 of 2010 (**Lt. General Vijay Oberoi versus Union of India & others**), and has struck down the provisions contained in paragraphs 8.2 of letter dated 31.01.2011 in the cases of the persons discharged from service on attaining the age of superannuation. The case of the petitioner is also identical and similar, as such he is entitled for the benefits of the order passed by the Hon'ble Supreme Court as well as Armed Forces Tribunal, Chandigarh.

6. Through a counter affidavit, the respondents have submitted that the applicant was enrolled on 07.05.1977 and discharged from service on 30.09.1999 under Army Rule 13 (3) Item III (i) on completion of service/age limit. He has rendered 22 years and 147 days of service in the Army and he is in receipt of service pension.

7. The Release Medical Board of the petitioner was held on 15.07.1999 at Military Hospital Bareilly (Annexure- C.A.-1), which regarded 30% disability, and the same was approved by the PCDA and notified 30% disability for five years. **(Annexure CA-2).**

8. The applicant's Re-survey Medical Board was carried out on 22.07.2003 and his disability was regarded as 30% and was extended for life. PCDA (P) Allahabad notified the same vide PPO No. D/RA/22716/2004 dated 16.03.2004 **(Annexure CA-3).**

9. Under the provisions of Government of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001, the rounding off benefits of 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.

10. The Hon'ble Supreme Court in a recent decision dated 24.05.2012 rendered in civil appeal No. 8433-8434 of 2009 (UOI and others versus Nk Narikar) has also held that benefit of enhancement of disability pension is given to those personnel who stood invalided out of service because their tenure of service got cut due to invalidment on

account of disability. Therefore, the petitioner does not come under the category of invalidment, as the petitioner was discharged from service on completion of his terms of engagement. The instant Original Application lacks merit and deserves to be dismissed.

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

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

13. 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.

14. 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.

15. It is clear that large number of judgments have been given 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.

16. 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 of 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."

17. 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. The 8applicant approached this Court for relief on 20.11.2012. The Apex Court judgment extending applicability of 31.01.2001 Government of India policy to those who have completed tenure is dated 10.12.2014.

18. 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. 481 of 2012, 142296636 W Ex Nayak Jageshwar Singh versus Union of India and others is allowed, partly and the

order dated 20.10.2012 (Annexure No.1) is quashed. The applicant will be entitled for rounding off of disability pension to 50% from 20.11.2009, 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 the respondents. The parties shall bear their own costs.

(Air Marshal Anil Chopra)
Member (A)

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

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