

Court No. 1 (List B)

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 322 of 2015

Thursday this the 23rd day of March, 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)

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

No. 13888680, Havildar Mohd. Aziz Khan
s/o Late Imam Bux, R/o – 332 DE – CPC,
Railway Colony, Malgodam, near Ghantaghar,
Kanpur – 208001

..... **Applicant**

By Legal Practitioner : Shri R Chandra, Ld. Counsel
for the applicant.

Vs.

1. Union of India, through Ministry of Defence, South Block New Delhi, 110011.
2. Chief of the Army Staff, Integrated Headquarter, of the Ministry of Defence (Army), South Block, New Delhi - 110011.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad
4. Officer – in – Charge, Records Army Service Corps Bangalore-07.

..... **Respondents**

By Legal Practitioner : Shri Ashish Kumar Singh,
Ld. Counsel for the respondents.

ORDER (ORAL)

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for rounding off of disability pension.

2. We have heard Shri R Chandra, learned counsel for the applicant, Shri Ashish Kumar Singh, learned counsel for the respondents and perused the record and with their consent, we proceed to decide the Original Application.

3. The factual matrix of the case is that the applicant was enrolled in the Army on 22.01.1981 and was discharged from service on 30.06.2001 (afternoon) at his own request, before completion of terms of engagement, under item III (iv) of Table 13 (3) to Army Rule 1954. At the time of discharge his Release Medical Board was held on 30.06.2001 and he was diagnosed as **“RECURRENT DISLOCATION RT SHOULDER V-67, N-83 AND E-818”** and his disability was assessed as attributable to and connected with military service. Disablement was assessed at 20% for five years by Medical authorities wef 01.07.2001 to 07.03.2006. Thereafter the applicant was brought before Re-survey Medical Board on 06.10.2004 which granted his disability pension @ 20% for life.

4. Learned Counsel for the applicant submitted that the applicant is in receipt of disability pension @ 20% for life. However, as per Govt. of India, Ministry of Defence, New Delhi letter No.1(2)/97/1/D(Pen-C) dated 31.01.2001, the applicant is entitled for

rounding off of the disability pension @ 50% but it has not been granted to him. Learned Counsel for the applicant also submitted that in catena of judgments, various Benches of Armed Forces Tribunals have given the benefit of rounding off to the personnel who have retired after completion of their terms of engagement in low medical category and Hon'ble The Apex Court has nodded in agreement of such relief.

5. Learned Counsel for the respondents concede that as per Hon'ble The Apex Court judgment, the applicant is entitled for rounding off of disability pension from 20% to 50%.

6. Having heard both the Counsels and perusal of the documents on record, we feel to recall the judgment of Hon'ble The Apex Court in the case of **K.J.S. Buttar vs. Union of India and others reported in SCC 2011, XI, 429** wherein The Hon'ble Apex Court has observed that a person who was discharged on completion of terms of service with a disability, was held to be 'invalided out' and was held entitled to the benefit of 'broad banding'. Hon'ble The Apex Court in Paras 17 & 18 of the judgment of **K.J.S. Buttar** (supra) has observed as under :-

“17. The respondents submitted that the appellant was not entitled to the above benefits as he had retired on completion of his Short Service Commission of 10 years and had not been invalided out of service.

18. In this connection it may be mentioned that the appellant was invalided out and released in a low medical category with permanent disability assessed at

50% by the Release Medical Board. As per the Defence Services Regulations/Pension Regulations for the Army 1961 where any officer is found suffering from disability attributable to or aggravated by Military Service he shall be deemed to have been invalided out of service. Relevant provision (page 25 additional documents) read as under :-

53. Officers Compulsorily Retired on Account of Age or on Completion of Tenure.

(1) An officer retired on completion of tenure or on completion of terms 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% or more, and service element, if the degree of disability is less than 20%. The retiring pension/retiring gratuity, if already sanctioned and paid, shall be adjusted against the disability pension/service element, as the case may be.

(2) 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.

In our opinion the appellant is entitled to the benefit of the above Regulation.”

7. It is also observed that Hon’ble The Apex Court in **Review Petition (C) No. 2688 of 2013 in Civil Appeal No. 5591/2006, U.O.I.**

& ANR vs K.J.S. Buttar has dismissed the Review Petition both on ground of delay as well as on merits on 21.01.2014.

8. We also find that the Union of India had taken in challenge the various orders of Tribunal whereby the benefit of rounding off of disability pension was granted to those personnel who had retired on completion of tenure of engagement. These appeals were dismissed. We feel to recall the judgment and order of Hon'ble The Apex Court of **Union of India and Ors. vs. Ram Avtar & ors (Civil Appeal No. 418 of 2012 dated 10th December 2014)** in which Hon'ble The Apex Court nodded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have retired on attaining the age of superannuation or completion of tenure of engagement, if found to be suffering from some disability. The relevant portion of the decision being relevant 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."*

9. In view of the directions given by Hon'ble The Apex Court in the cases of **K.J.S. Buttar** (supra) and **Ram Avtar** (supra), we are of the considered view that in conformity with the Rules, Regulations and the dictum of law laid down by Hon'ble The Apex Court, the applicant is entitled to the benefit of rounding off of disability pension to 50%.

10. On the issue of delay and payment of arrears, we recall the case of **Shiv Dass Vs Union of India reported in 2007 (3) SLR 445** wherein in Para 9 of the judgement, Hon'ble The Apex Court has observed:-

"9. In the case of the pension the cause of action actually continues from month to month. That however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or

restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits, it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

11. The **Original Application No. 322 of 2015** succeeds and is allowed. The applicant is entitled benefit of rounding off of disability pension from 20% to 50% for life from three years prior to filing of this Original Application i.e 06.07.2012. The enhanced disability pension alongwith the arrears is directed to be disbursed to the applicant from the due date within four months from the date a certified copy of this order is served upon the respondents. In case the respondents fail to pay the amount to the applicant within four months, they will have to pay interest @ 9% from due date till the date of actual payment.

12. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated : Mar 2017
RS/*