

RESERVED
Court No.1

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

Original Application No. 140 of 2019

Thursday, this the 28th day of March, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal B.B.P. Sinha, Member (A)

No. JC-370603 M Ex. Sub. Amar Nath Tiwari Son of Shri B.N. Tewari,
resident of Adarsh Nagar, PO – Nilmattha, Cantt., Lucknow-226002.

..... Applicant

Ld. Counsel for the: **Shri Ashish Kumar Singh** ,
Applicant Advocate

Versus

1. Union of India through The Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of MoD (Army), DHQ PO, New Delhi-110011.
3. Officer Incharge, Pension Group, Signal Records, C/o 56 APO.

..... Respondents

Ld. Counsel for the Respondents **:Dr. Shesh Narain Pandey,**
Central Govt Counsel.

ORDER**“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- “(i) *To Direct the Respondents to consider ROUNDING-OFF of Disability Pension from 20% to 50% from 01/05.2005 in light of the present rounding off policy as applicable and issue fresh PPO with all previous balance with interest.*
- (ii) *To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.*
- (iii) *Allow this application with cost.”*

2. Briefly stated facts of the case are that the applicant was enrolled in Corps of Signal in Army on 14.04.1977 and was discharged in the rank of Subedar in low medical category with effect from 01.05.2005. The Release Medical Board held on 10.12.2004 identified his disability as ‘**MYCETOMA GREAT TOE (RT) (B-47)**’ and assessed it @11-14% for life. The Principal Controller of Defence Accounts (Pensions), Allahabad accepted the disability pension claim @20% for life with effect from 01.05.2005 vide Pension Payment Order No. DE/013863/2005 dated 26.11.2005. The applicant preferred representation dated 07.03.2018 but the benefit of rounding off of disability pension has not been granted by the respondents. Presently the applicant is in receipt of 20% disability pension for life and has moved this Original Application for the benefit of rounding off of disability element.

3. Ld. Counsel for the applicant argued that since the applicant is already in receipt of 20% disability element for life therefore in view of judgment in O.A. No. 328 of 2016, *Colonel Dharam Raj Singh (Retd)*, decided by Armed Forces Tribunal, Regional Bench, Lucknow on 07.09.2016 and Hon’ble Apex Court judgment in the case of *Union of India and Ors vs Ram Avtar & ors* (Civil appeal No. 418 of 2012 decided on 10th December 2014), the applicant is also entitled to benefit of rounding off of disability element @ 50% for life.

4. On the other hand, though Ld. Counsel for the respondents conceded receipt of 20% disability pension by the applicant but contended that the applicant is not entitled to the benefit of rounding off of disability pension on the ground that the applicant’s services were not cut short as he was not invalided out on account of his disability. In the instant case the applicant was

discharged from service on completion of his terms of engagement, therefore, the Ld. Counsel claimed that he is not eligible for the benefit of rounding off.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. The only question which needs to be answered is that whether the applicant is entitled for the benefit of rounding off of his disability pension?

6. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of Hon'ble Supreme Court judgment in the case of ***Union of India and Ors vs Ram Avtar & ors*** (Civil appeal No 418 of 2012 decided on 10th December 2014) wherein the Hon'ble Apex Court has nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalidated out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision 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.”

7. In the instant case, there is no dispute that the applicant is in receipt of 20% disability pension for life. This fact has also been accepted by the respondents in para 5 of their Counter Affidavit. Thus in view of the settled law on this

matter we are of the considered opinion that the applicant has wrongly been denied the benefit of rounding off.

8. It may be observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, para-9, Hon'ble Apex Court has observed:

“In the case of 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.”

9. As observed in the preceding paragraphs, delay in filing the O.A. has been condoned by this Tribunal vide order dated 27.03.2019, as such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability pension @ 20% for life to be rounded off to 50% for life may be made applicable to the applicant from three preceding years from the date of filing of the O.A.

10. In view of the above, the **Original Application No. 140 of 2019** deserves to be allowed, hence **allowed**. The applicant is entitled to the benefit of rounding off of disability element from 20% for life to 50% for life with effect from three years prior to the date of filing of this Original Application. The date of filing of this Original Application is 19.11.2018. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 9% per annum till actual payment.

No order as to costs.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated : March, 2019

AKD/-