

RESERVED
Court No.1

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

Original Application No. 144 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)

JC – 797157N Sub. (Retd.) Ashok Kumar Srivastava, S/o Sri Balram Lal Srivastava, R/o Padrauna Chhwani East, Ward No. 1, Balbhadra Chak Deoria.

..... Applicant

Ld. Counsel for the: **Shri Anand Yadav Brief Holder of Shri S.G. Singh,**
Applicant Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110011.
3. Controller of Defence Accounts (Pensions), Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Shri Adesh Kumar Gupta,**
Central Govt Counsel.

ORDER

“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

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:-

- “(a) *Issue/Pass an order or direction of appropriate nature whereby commanding the respondents to consider the case of applicant as per rounding off scheme and thereafter grant disability pension of 50% in place of 20%.*
- (b) *Allow the application with all consequential benefits with exemplary cost.”*

2. Briefly stated facts of the case are that the applicant was enrolled in Army on 17.10.1977 and was discharged in the rank of Subedar in low medical category with effect from 01.11.2005. The Release Medical Board held on 01.09.2004 identified his disability as ‘**BILETERAL PLEURAL EFFUSION (TB) (J-90)**’ and assessed it @20% for life. Accordingly, he has been issued Pension Payment Order. The applicant preferred an application dated 09.11.2017 for benefit of rounding off disability pension from 20% to 50%, but, no order has been passed on the said application. 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, during the course of arguments, though Ld. Counsel for the respondents conceded receipt of 20% disability pension by the applicant and produced the original medical documents, 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 and is also clearly indicated in the original documents produced before us during the course of hearing. Thus in view of the settled law on this matter we

are of the considered opinion that the applicant is entitled 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 26.03.2019, 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 Original Application.

10. In view of the above, the **Original Application No. 144 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 23.04.2018. 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/-