

RESERVED

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 155 of 2019

Tuesday, this the 26<sup>th</sup> day of March, 2019

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)**  
**“Hon’ble Air Marshal BBP Sinha, Member (A)”**

JC No.218559K Lal Bahadur Tamang, Son of Shri Kamble Tamang, P.O. Ghangora, Tehsil Dehradun, District Dehradun, Uttarakhand, Pin-248141

..... Applicant

Ld. Counsel for the: **Shri Ashish Kumar Singh & Shri V.A.Singh, Advocates**  
Applicant

Versus

1. Union of India and others through, The Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army) DHQ PO, New Delhi-110011.
3. The CRO, Abhilekh 11 Gorkha Rifles, Records 11 Gorkha Rifles, Pin- 900450, C/o 56 APO.

.....Respondents

Ld. Counsel for the: **Ms Amrita Chakraborty, Advocate,**  
Respondents.

**ORDER****(Per Hon’ble Mr Justice SVS Rathore, Member (J) )**

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for rounding off of disability pension presently being given to him @ 40%. The applicant has prayed for the following relief:-

“(i) To direct respondents to ROUND-OFF the Disability pension of the Applicant from 40% to 50% as per rounding-off policy.

(ii) To pass a direction to respondents to consider payment of Ex Gratia amount of Rs.3,60,000/- as applicable.

(iii) To pass orders which their Lordships may deem fit and proper in the existing facts and circumstances of the case.

(iv) Allow this application with cost. ”

2. The applicant was enrolled in the Indian Army on 12.12.1971 and discharged from service on 19.05.1997 in low medical category. The Medical Board held before discharge assessed applicant's disability element as 40% for life for '**Gun Shot Wound**' vide CORR.PPO D/BC/325/2003. It is stated that although the applicant was granted disability element at 40% for life but was not granted the benefit of rounding off even after representation in this regard. The learned counsel during hearing confined himself to only one prayer i.e. the benefit of rounding off of disability element from 40% to 50%.

3. Ld. Counsel for the applicant argued that since the applicant is already in receipt of 40% 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 10<sup>th</sup> December 2014), the applicant is also entitled to benefit of rounding off of disability element @ 50% for life.

4. In the instant case, no counter affidavit has been filed as the facts stated in the petition are admitted by the respondents. The respondents have not disputed that the applicant suffered disability to the extent of 40% for life. Additionally, copy of the PPO annexed by applicant conforms that he is in receipt of 40% of disability pension. During the course of arguments learned counsel for the respondents has conceded the claim of the applicant.

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 10<sup>th</sup> 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 invalided 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 invalided 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 40% disability pension for life. This fact has also been accepted by the respondents and is also clearly indicated by the P.P.O. attached with this Original Application. Thus in view of the settled law on this matter we are of the considered opinion that the applicant is entitled to 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. The delay in filing the O.A. has been condoned by this Tribunal vide order dated 28.02.2019, 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 @ 40% 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. Accordingly the O.A. is **allowed**. The respondents are directed to verify the PPO and if the same is found to be genuine then the benefit of rounding off from 40% to 50% for life be given to the applicant w.e.f. three years prior to filing this petition. The date of filing this petition is 23.04.2018. The respondents are further 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. In case the respondents fail to give effect to this order within the

stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

11. No order as to cost.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated : March 26, 2019

JPT

**(Justice SVS Rathore)**  
**Member (J)**