

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 255 of 2014

Thursday this the 24th day of September, 2015

Hon'ble Mr. Justice V.K. DIXIT, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

No. 13937931 Ex Hav Shital Prasad,
aged about 60 years, S/o Shree Prasad,
R/o Vill & Post ; Pradhanpur,
Dist : Ballia (UP)

..... Applicant

By Legal Practitioner Shri Shailendra Kumar Singh, Advocate

Versus

1. Union of India, through the Secretary,
Ministry of Defence,
New Delhi-110011.
2. Chief of Army Staff,
Integrated Headquarters, Ministry of Defence,
South Block, New Delhi-110011.
3. OIC Records,
Army Medical Corps,
Lucknow (UP).
4. P C D A (Pensions),
Draupadi Ghat,
Allahabad (UP)-211014.

..... Respondents

By Legal Practitioner Shri Bhanu Pratap Singh Chauhan,
Learned Counsel for the Central Government

ORDER

“Hon’ble Lt Gen Gyan Bhushan, 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, and he has claimed the reliefs as under:-

- “A. To quash and set aside the order passed by Respondent No. 3, communicated to the applicant vide their letter dated 31 Aug 2013 (Impugned Order & Annexure No. A-1).*
- B. To issue order or direction to the Respondents to round off the disability pension of the applicant from 20% to 50% in terms of Govt of India (MoD) letter dated 31 Jan 2001 from the date of discharge (01 Jul 1997) alongwith arrears with suitable rate of interest per annum as per recommendations of V CPC.*
- C. Any other relief as considered deemed just and proper by the Hon’ble Tribunal in the nature and circumstances of the instant case be awarded in favour of the applicant.*
- D. Cost of the application be awarded to the applicant.”*

2. The present application has been preferred for relief of rounding off of disability pension already granted to the applicant. The admitted and undisputed facts of the case are that the applicant was enrolled in the Army on 29.06.1974 and was discharged with effect from 01.07.1997 (forenoon) and he is in receipt of 20% disability pension for life.

3. Heard Shri Shailendra Kumar Singh, Learned Counsel for the applicant, Shri Bhanu Pratap Singh Chauhan, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that when the applicant came to know in Oct/Nov 2012 that Govt of India has issued some notification for rounding off the disability pension for the personnel like the applicant, he represented his case to Respondent No. 3 vide his application dated 23 Nov 2012. In turn Respondent No. 3 vide their letter dated 31 Aug 2013 (Impugned Order & Annexure A-1 of the Original Application), after lapse of 09 months, informed the applicant that broad banding of disability element is applicable to those individuals who have been invalided out of service on medical grounds before completion of terms of engagement. Further, it was mentioned that applicant is not eligible for rounding off of his disability element as he was discharged from service under Rules 13 (3) (III) (i) of the Army Rules 1954 during extension of service. He further submitted that in similar case Hon'ble Tribunal was pleased to pass an order on 28 May 2014 in favour of the petitioner in O.A. 319 of 2013 (Ex Naib Subedar Amar Nath Jha Vs Union of India and others). Apart from this in catena of judgments, Tribunals has given the relief of rounding off and even the Hon'ble the Apex court has nodded in agreement of such relief. The applicant is already in receipt of disability element since the date of his discharge i.e., 01.07.1997

and thus same needs to be rounded off in terms of Govt of India letter dated 31.01.2001.

5. Per contra, the Learned Counsel for the respondents submitted that the person who has been invalided out of service or discharged from service due to being low Medical Category before completion of terms of engagement is entitled to rounding off of disability pension. Personnel who retire or are discharged on attaining the age of retirement on completion of tenure are not eligible to rounding off of disability pension. The applicant was discharged from service under Army Rule 13 (3) III (i) of the Army Rules 1954 for being placed in Low Medical Category BEE (Permanent) during the extended tenure and his further retention in service was not considered in the interest of state. Hence, the petitioner is not entitled for benefit of rounding off of disability pension.

6. The moot point for consideration in the instant case is whether the applicant would be entitled to benefits of rounding off of the disability pension despite his being discharged from service under Army Rule 13 (3) III (i). It is not disputed that at the time of discharge, the applicant was in low medical category and is in receipt of disability pension @ 20% for life. In connection with the submission, we feel called to refer to Rule 4 of the Entitlement Rules for Casualty Pensionary Awards, 1982 and Para 53 of Pension Regulations for the Army 1961 (Part-1). Its being relevant, are quoted below :-

Entitlement Rules for Casualty Pensionary Awards, 1982.

Rule 4 - "Invalidating from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because no alternative employment suitable to their low medical category can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their engagement will be deemed to have been invalidated out of service."

7. Para 53 of Pension Regulations for the Army 1961 (Part-I)

53. (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 invalidated 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 a disease on the date of first removal from duty on account of that disease.

8. 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 has**

observed that a person who was discharged by retirement 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.

9. *Hon'ble The Supreme Court in Review Petition (C) No 2688 of 2013 in Civil Appeal No 5591/2006, U.O.I. & ANR vs K.J.S. Buttar dismissed the Review Petition both on ground of delay as well as on merits on 21.01.2014.*

10. **In 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 been invalided out of service on account of being in low medical category or who has retired on attaining the age of superannuation or completion of his 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."

11. It would appear that in the aforesaid case, 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 superannuation or on completion of tenure of engagement. The bunch of appeals culminated in being dismissed and the judgments of the High Court and Armed Forces Tribunal Benches were noded in approval attended with direction that the dismissal of those appeals will be taken note of by the High Courts as well as by the Armed Forces Tribunal Benches in granting appropriate relief to the pensioners before them. When the peremptory direction of the Apex Court is applied to the present case, it would lead us to the conclusion that the applicant, who was discharged on completion of his tenure in the service, would also be entitled to the benefit of rounding off.

12. In view of the directions given by Hon'ble The Apex Court in the cases of **K.J.S. Buttar vs. Union of India & others (supra)** and the **Union of India & others vs. Ram Avtar (supra)**, we are of the considered view that the impugned order passed by respondent No. 3 was not only unjust and illegal, but also not in conformity with the Rules, Regulations and the dictum of law laid down by Hon'ble The Apex Court.

The impugned order dated 31.08.2013 passed by the respondent No. 3 deserves to be set aside and the applicant is entitled to the benefit of rounding off of disability pension to 50% along with interest at the rate of 9% per annum.

ORDER

13. In the result, the Original Application succeeds and is allowed and the impugned order dated 31.08.2013 passed by Respondent No. 3 by which the benefit of rounding off of disability pension was rejected, is set aside. The applicant is entitled for the benefit of rounding off and shall be paid the disability pension by extending the benefit of rounding off @ 50% for life. The applicant shall be paid interest @ 9% on arrears till the date of payment. The enhanced disability pension alongwith the arrears is directed to be disbursed to the applicant from the due date within three months from the date certified copy of this order is served upon the respondents.

14. There will be no orders as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice V.K. DIXIT)
Member (J)

Dated : September , 2015
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