

Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 46 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. JC-213671-M Ex-Sub Maj. Bhushan Prasad Pandey,
son of Late Ramji Prasad Pandey,
Resident of H.No.1119 Sector –M,
Aashiana, Lucknow

..... Applicant

By Legal Practitioner Shri Parijaat Belaura, Advocate

Versus

01. Union of India through the Secretary,
Ministry of Defence,
New Delhi.
02. Chief of Army Staff Integrated Head Quarter
Ministry of Defence, South Block
New Delhi.
03. The Principal Controller of Defence Accounts (Pension)
Drapedi Ghat, Allahabad (UP)
04. Officer in Charge, ASC Records, (South) Bangalore-560007.

..... Respondents

By Legal Practitioner Shri Ashutosh Kumar Srivastava,
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:-

- “(I) To quash order dated 05.08.2011 passed by opposite party no.4.*
- (II) To issue order or direction opposite parties to grant disability Pension 50% from the date of his retirement.*
- (III) To issue order or direction to opposite parties to pay arrears with interest @ 12% to the applicant.*
- (IV) Any other relief as considered by this Hon’ble Tribunal is awarded favour of the applicant.*
- (V) Cost of the application be awarded to the applicant.”*

2. The applicant is already in receipt of 20% disability pension for life. 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 18.05.1977 and was discharged on 30.05.2007 in low medical category after completion of 30 years of service in the rank of Sub. Maj. The applicant forwarded his claim for rounding off of the disability pension through representation dated 31.07.2011, which was rejected vide order dated 05.08.2011.

3. Heard Shri Parijaat Belaura, Learned Counsel for the applicant, Shri Ashutosh Kumar Srivastava, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that he was already in receipt of 20% disability pension for life and in view of Government of India Ministry of Defence letter No. 1(2)/97/D-Pen(C) dated 31.01.2001, he is also entitled to the benefit of rounding off of his disability pension to 50%. He forwarded his claim through representation dated 31.07.2011, which was wrongly rejected by respondent No.4 vide order dated 05.08.2011.

5. Per contra, the Learned Counsel for the respondents submitted that a 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 and the one, who retired or discharged on attaining the age of superannuation on completion of tenure, is not entitled for the benefit of rounding off of disability pension. He further submitted that in the case in hand, the applicant was discharged from service on completion of his terms of engagement. He was neither invalided out of service or discharged from service before completion of the term of engagement, as such he is not entitled to the benefit of rounding off in terms of Para 7.2 of the Government Order dated 31.01.2001 and that is why his claim has been rejected vide letter dated 05.08.2011.

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 on completion of his term of engagement. 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). These being relevant, are quoted below :-

“Entitlement Rules for Casualty Pensionary Awards, 1982.

Rule 4 - “Invaliding 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 aforesaid judgment of **K.J.S. Buttar** (supra) has observed as under :-

“17. The respondents submitted that the appellant was not entitled to the above benefit 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 Service 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 the 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 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 noddled 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. 4 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 05.08.2011 passed by the respondent No.4 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.

13. In the result, the Original Application succeeds and is allowed and the impugned order dated 05.08.2011 passed by Respondent No. 4 by which the benefit of rounding off of disability pension was denied, 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 along with 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)

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Dated : September , 2015