

RESERVED**Court No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 287 of 2016**Wednesday, this the 08th day of November, 2017**"Hon'ble Mr. Justice D.P. Singh, Member (J)****"Hon'ble Air Marshal BBP, Sinha, Member (A)"**

No. JC - 580112-N Ex-Sub/Clk (SD). Mohan Chand Son of Late - Hari Chand, Resident of Mohalla- Ibrahimpur **Post Nilmatha** via Dilkusha, District - Lucknow - 226002.
**Applicant**

Ld. Counsel for the : **Shri Parijaat Belaura, Advocate**
 Applicant (Counsel for the applicant)

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) Draupadi Ghat, Allahabad (UP)
04. Officer in Charge, The Kumaon Regiment, PIN No - 990473 C/o 56 APO**Respondents**

Ld. Counsel for the: **Shri Namit Sharma, Advocate,**
 Respondents. Central Govt Standing Counsel.

Assisted by : **Maj Piyush Thakran, OIC Legal Cell.**

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act 2007 for the relief of granting disability pension @ 50% from the date of his retirement followed by relief to pay arrears with interest @ 12% to the Applicant.

2. The fact of the case draped in brevity are that the Applicant was enrolled in the Indian Army on 14.07.1984 and was discharged from service on 31.07.2012 under rule 13 (3) Item 1 (i) (a) of Army Rules 1954 after rendering more than 28 years of service. Earlier also the Applicant was prematurely discharged from service in the month of Aug 2008 in accordance with the policy “ **Management of LMC personals in the Army**”. His disability “**SYSTEMIC LUPUS ERATHRAMOTOSIS**” was considered aggravated by service and assessed at 20% for life. Subsequently he was re-instated in service on account of binding effect of the decision of Raj Pal Singh vs Union of India in Feb 2009. On second occasion, before being discharged, the Applicant was examined by Release Medical Board which found the Applicant suffering from “**SYSTEMIC LUPUS ERYTHEMATOSIS**” and his disability was assessed as 20% for life but at the same time, the same was opined to be neither attributable to nor aggravated by Military service.

After being discharged, the Applicant laid out his claim for disability pension which was rejected by PCDA (P) vide order dated 20.09.2012. Thereafter, the Applicant preferred first appeal which was allowed and the Applicant was granted disability pension as against assessment of disability as 20% for life.

3. We have heard learned counsel for the Applicant and also learned counsel for the respondents and have also gone through the materials on record.

4. Learned counsel for the Applicant referred to various decisions of the Apex Court including the decisions of the Apex Court in ***Dharamvir Singh vs. Union of India and others***, reported in (2013)7 SCC 316, ***Sukhvinder Singh vs. Union of India***, reported in (2014) 14 SCC 364, ***Union of India and others vs. Angad Singh Titaria***, reported in (2015) 12 SCC 257 and ***Union of India and others vs. Rajbir Singh***, reported in (2015) 12 SCC 264 and the applicant is considered entitled for grant of disability pension.

5. Per contra, learned counsel for the respondents contends that since the Applicant was discharged from service on fulfilling of his terms of engagement and was not invalidated out, the rounding off cannot be granted to him as the same is applicable to those personnel who are invalidated out of service before completion of terms of engagements of service as enumerated at para 4.1 of

Government of India Ministry of defence letter dated 31.01.2001. Hence the crux of submission is that since the Applicant was discharged from service on fulfilling of his terms of engagement and thus he is not entitled for rounding off benefits of his disability element from 20% to 50% as per existing policy.

6. Since dispute in the instant case revolves round a very short question which is whether the Applicant would be entitled to the benefit of rounding off or not, we feel called to refer to a decision of the Apex Court in Sukhvinder Singh vs Union of India reported in (2014) STPL (WEF) 468 SC in which the Apex Court held that wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent and further as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.

7. In **Union of India and Ors v 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.

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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."

8. The bunch of appeals culminated in being dismissed and the judgments of the High Court and Armed Forces Tribunal Benches were nodded 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 Hon'ble The Apex Court is applied to the present case, it would lead us to the conclusion that the applicant, who was invalided out of service on account of his being in low medical category, would also be entitled to the benefit of rounding off or retired from service.

9. Thus in the facts and circumstances of the case, we converge to the conclusion that the Applicant is entitled to the benefit of rounding off from 20% to 50% in terms of the above decisions of the Apex Court.

Order

10. As a result of foregoing discussions, the O.A is allowed and it is held that the Applicant is entitled to the benefits of rounding off from 20% to 50%. We direct the Respondents to pay the arrears of the aforesaid disability pension alongwith interest @ 9% per annum from the date of discharge till the date of payment. The Respondents are directed to give effect to the order within six months from

the date of receipt of a certified copy of this order failing which the Petitioner shall be entitled to interest at the rate of 10% per annum.

11. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: November, 2017
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