

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 498 of 2018**Tuesday, this the 27th day of November 2018**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)”**

NTR-16395W Lt Col Prem Datt Kaushal (Retd) son of Late Desh Raj Kaushal, 188-A, Sainik Nagar, Lane No 11, Rai Bareilly Road, Lucknow-226025.

..... Applicant

Ld. Counsel for the Applicant : **Shri Manoj Kumar Awasthi**, Advocate.

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Integrated HQ of MoD (Army), AG’s Branch, Medical Personnel Record Section (O), Dte Gen of Medical Services (Army), ‘L’ Block, New Delhi-110001.
3. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the Respondents. :**Mrs Anju Singh**,
Addl Central Govt. Standing Counsel

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

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs.

- (i) *The Hon’ble Tribunal may kindly be pleased to direct the respondents to grant disability pension to the applicant @ 50% rounding off 20% to 50% w.e.f. 01.05.2002 (date of superannuation) along with the arrears including appropriate interest.*
- (ii) *Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. At the very outset, it may be observed that the present O.A. for rounding off of disability has been preferred by the applicant after delay of more than sixteen years. Since the matter pertains to rounding off of disability pension which involves recurring cause of action, as such, vide order dated 17.10.2018, delay in approaching the Tribunal has been condoned.

3. Shorn of unnecessary details, the facts of the case are that the applicant was commissioned in the Indian Army on 06.06.1976 and after completing of his term of engagement, retired on 30.04.2002 from the rank of Lieutenant Colonel. Before being discharged, the applicant was brought before the Release Medical Board (RMB) which opined that the applicant was suffering from 20% disability due to disease PIVD L-5, S-1 (Optd) and assessed the disability for two years being attributable to military service. Re-survey Medical Board (RSMB) of the applicant was carried out at Command Hospital (Central Command) Lucknow. The RSMB assessed disability of the applicant

@ 20% for life. The applicant preferred representation 01.02.2018 which it appears is still pending.

4. The RSMB has held the disability of the applicant @ 20% for life, and as per the PPO filed by the applicant, he is in receipt of 20% disability element for life.

5. Learned Counsel for the applicant argued that the applicant was commissioned in a fit state and the disease suffered by the applicant was opined by the RMB to be attributable to military service and since the disability @ 20% was assessed by the RSMB to be for life, as such, in view of decisions of Hon'ble Supreme Court the disability @ 20% as assessed by the RSMB deserves to be rounded off to 50% for life.

6. We have heard learned counsel for the parties and perused the record.

7. In the case of *Union of India and Ors vs. Ram Avtar & ors* (Civil Appeal No 418 of 2012 dated 10th December 2014) the Hon'ble Apex Court nodded in disapproval at the policy of the Government of India in restricting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service on account of being in low medical category. The Hon'ble Apex Court has made it clear that the policy of rounding off is equally applicable to those who are proceeding on retirement or discharged on completion of term of engagement. 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. In view of the ratio of the judgment, the applicant is also entitled to the benefit of rounding off of his disability element of pension, hence his disability of 20% for life will stand rounded off to 50% for life.

9. Learned counsel for the applicant further submitted that the larger Bench of Armed Forces Tribunal, Principal Bench, New Delhi vide order dated 01.12.2017 passed in O.A. No. 1439 of 2016 ***Ex Sergeant Girish Kumar vs. Union of India and others***, had enunciated that Armed Forces personnel who retired pre 01.01.1996 will be entitled to the arrears of broad banding with effect from 01.01.1996 and in case of those retired on or after 01.01.1996 will be entitled to arrears with effect from the date of their retirement. It was argued that in view of the decision of the Larger Bench in the case of ***Ex Sergeant Girish Kumar*** (supra), the applicant is entitled to the benefit of rounding off and payment of arrears of disability pension from the date of his superannuation, i.e. 30.04.2002. In this regard, it may be noticed that Hon'ble the Supreme Court vide order dated 13.07.2018 passed in Civil Appeal Diary No 21811 of 2018, ***Union of India through its Secretary & ors***

vs. *Sgt. Girish Kumar* has stayed the decision of the Larger Bench in the case of *Ex Sergeant Girish Kumar* (supra). For convenience sake, order dated 13.07.2018 is excerpted as under:

“Leave to appeal granted.

Delay condoned.

Issue notice.

In the meanwhile, there shall be a stay of operation of the impugned judgment and order passed by the Armed Forces Tribunal.

However, learned Additional Solicitor General says that he will advise the Union of India to release the disability pension for a period of three years prior to the date of filing the original application before the Tribunal or the date of retirement as may be applicable.”

10. It may also 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.”*

11. As observed in the preceding paragraphs, delay in filing the O.A. has been condoned by this Tribunal, 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 O.A.

12. In view of above, the O.A. succeeds and is hereby **allowed**. The respondents are directed to grant disability pension to the applicant @ 20% for life which shall be rounded off to 50% for life from three years prior to the filing of the present Original Application. The date of filing of the O.A. is 11.04.2018. This order shall be complied with by the respondents within four months from the date of presentation of a certified copy of this order failing which the applicant shall be further entitled to interest at the rate of 9% per annum from the due date, till date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: 27th November, 2018
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