

RESERVED
Court No.1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 263 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)

No. 14807104F Hav/Dvr (MT) MK Shukla (Retd), son of
Devi Prasad Shukla, Village-Bharchak, Post Office-Garhi
Manikpur, Tehsil-Kunda, District-Pratapgarh (UP),
PIN-230202.

..... Applicant

Ld. Counsel for the: **Col (Retd) Y.R. Sharma**, Advocate
Applicant

Versus

1. Union of India, Through Secretary, Ministry of
Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Army Headquarters, South
Block, New Delhi-110011.
3. Officer in Charge, ASC Records (South), PIN-900493,
C/O 56 APO.
4. Principal Controller of Defence Account (Pension),
Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the
Respondents

:Shri Rajiv Pandey
Central Govt Counsel.

ORDER**“Per Hon’ble Air Marshal BBP Sinha, 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, whereby the applicant has sought following reliefs:-

- (a) *Direct the respondents to revise the existing Disability pension in terms of the Government of India, Ministry of Defence letter No 17 (01)/2017/D/Pen/Policy dated 23 January 2018 and PCDA (P) Circular No. 596 dated 09 Feb 2018.*
- (b) *Direct respondents to grant benefit of rounding off/broad banding of existing disability element of percentage after revision from 20% to 50% with effect from the date of retirement i.e. 31 Dec 2016.*
- (c) *Direct the respondents to pay an interest @ 12% per annum on the arrears.*
- (d) *Issue/Pass an order or direction as the Honourable Tribunal may deem fit in the circumstances of the case.*
- (e) *Allow this Original Application with costs.*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 28.12.1992 and discharged from service in low medical category after rendering 24 years and 04 days of service on 31.12.2016 in low medical category under Rule 13 (3) III (i) (b) of the Army Rules 1954. The applicant is in receipt of 20% disability pension for life.

3. Ld. Counsel for the applicant argued that since the applicant is already in receipt of 20% disability element for life on account of suffering from “Generalised Idiopathic Epilepsy-aggravated by military service” therefore in view of judgment in O.A. No. 328 of 2016, **Colonel Dharam Raj Singh (Retd)**,

decided by AFT, Regional Bench, Lucknow on 07.09.2016 and Hon'ble Apex Court judgment in the case of **KJS Buttar vs Union of India & Ors**, CA No. 5591 of 2006 decided on 31.3.2011, the applicant is also entitled to rounding off of disability element @ 50% for life.

4. On the other hand, though Ld. Counsel for the respondents conceded receipt of 20% disability pension by the applicant but contended that the applicant is not entitled to rounding off of disability pension on the ground that the applicant's services were not cut short on account of disability suffered by the applicant. In the instant case the applicant was discharged from service on completion of his terms of engagement, therefore the Ld. Counsel claimed that he is not eligible for the benefit of rounding off.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. We have specifically checked the copy of the current PPO vide which the applicant is in receipt of 20% disability element.

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 10th December 2014) wherein the Hon'ble Apex Court nodded in disapproval of 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 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."

7. In the instant case, there is no dispute that the applicant is in receipt of 20% disability pension for life. This fact has also been accepted by the respondents. Thus in view of the settled law on this matter we are of the considered opinion that the applicant is entitled the benefit of rounding off.

8. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The applicant is entitled to rounding off of disability pension from 20% for life to 50% for life w.e.f. 01.01.2017. The respondents are 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. Default will invite interest @ 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : November, 2018
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