

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)**

O.A. No. 299 of 2018

Thursday, this the 1st day of November 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

No. 13679681K Ex, Havildar Prakash Chandra Suyal son of Sri Shiv
Dutt Suyal resident of Songaon, Post : Bhimtal, District : Nainital
..... **Applicant**

Learned Counsel for the Applicant : Shri C.S. Rawat

Versus

1. Union of India through Secretary, Ministry of Defence,
Central Civil Secretariat, New Delhi
2. Chief of the Army Staff, Integrated Headquarters, Ministry
of Defence (Army), New Delhi.
3. Director Pension/Policy, Government of India, Ministry of
Defence, Department of Ex-Servicemen Welfare, New Delhi.
C/o 56 APO
4. Record Officer, Brigade of the Guards Kamptee-44100
5. P.C.D.A. (Pension), Allahabad

..... **Respondents**

Learned Counsel for the Respondents : Dr. Gyan Singh

ORDER

“Per Hon. Mr. Justice S.V.S. Rathore, Member (J)”

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:-

- “ (i) *To set aside the order dated 8.4.2013 passed by respondent No. 5 after calling the record.*
- (ii) *To summon the entire records and grant Battle Casualty pension benefits to the applicant as per the recommendation of the pay commission time to time with arrears.*
- (iii) *To direct the respondents to forthwith process in the matter of the petitioner for grant of War/Battle Injury pension in terms of the Circular dated 6.4.11 and pay the differential admissible to him as per the prevailing guidelines and circular with 12% interest from the date which is admissible*
- (iv) *To such other suitable order which this Hon'ble Tribunal may deemed fit and proper I the facts and circumstances of the case.*

2. The factual matrix of the case is that the applicant was enrolled in the Brigade of the Guards (GUARDS) Regiment on 24.12.1979 and transferred to pension establishment on 31.12.2003 (A.N.) under Rule 13 (3) III (i) of Army Rule 1954 after rendering 24 years and 8 days of service in the Army. At the time of discharge, the applicant was in low medical category 'S1H1A3(P)P1E1' for the disability **“GUN SHOT WOUND (RT) CHEST (OPTD) AND GUN SHOT WOUND (LT) HAND**

(OPTD)". Medical Board assessed his composite disability @ 40% for two years and opined his disability attributable to military service and also connected with service. Accordingly he was granted War Injury Element of Pension @ 40% for two years. Last Re-Survey Medical Board held at Military Hospital, Bareilly on 07.04.2005 assessed his composite disability @ 40% for life and accordingly he was granted War Injury Element of pension vide PPO dated 08.12.2005 annexed at CA-3 & 4 of the Counter Affidavit. The applicant preferred a petition dated 13.03.2013 for grant of rounding off benefits of War Injury Element of Pension from 40% to 50% but it was denied stating that since the applicant was discharged from service after completion of his terms of engagement under Army Rule 13 (3) III (i), he is not entitled to rounding off benefits. The benefits of rounding off of disability pension under Govt. of India, Ministry of Defence letter dated 31.01.2001 are admissible only to the individuals who were invalided out from the service. Aggrieved, the applicant preferred this Original Application.

3. Ld. Counsel for the applicant submitted that the applicant is already in receipt of 40% War Injury Element of pension for life for the disability "**GUN SHOT WOUND (RT) CHEST (OPTD) AND GUN SHOT WOUND (LT) HAND (OPTD)**" which he got in operation 'RAKSHAK' in Poonch Sector in Jammu and Kashmir and was decalred as Battle Casualty. In pursuance to the

Ministry of Defence letter No 1(2)/97/D (Pen-C) dated 31.01.2001, and its subsequent amendment, the applicant is entitled to the benefit of rounding off of the war injury element of pension. In pursuance to the Disability Pension Entitlements Rule, 1982, the applicant will be deemed to have been invalided out of service and thus he is entitled to the benefit of rounding off of the war injury element of pension which is being extended to Army personnel invalided out by the Release Medical Board on account of low medical category.

4. It is admitted on behalf of the respondents in their counter affidavit that the applicant has been granted war injury element of pension for life vide PPO dated 08.12.2005. Regarding benefit of rounding off of the war injury element, it has been pleaded on behalf of the respondents that it has to be done by the Pension Sanctioning Authority. It is also averred by the respondents that Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare vide letter dated 05.09.2017 has revised the policy for grant of rounding off benefits with effect from 01.01.2016 to Armed Forces personnel who were discharged/retired under the circumstances mentioned in Government of India, Ministry of Defence Letter dated 31.01.2001 with disability including cases covered under the Government of India, Ministry of Defence Letter dated 29.09.2009 and 19.05.2017 and the disability/war injury element

has already been accepted at the rate of 20% or more and drawing disability element at the rate of 20% or more as on 01.01.2016. It has further been averred that in terms of Par-6 of Government of India, Ministry of Defence letter dated 23.01.2018 and PCDA (P) Allahabad Circular No. 596 dated 09.02.2018, all Pension Disbursing Authorities have been authorised to pay rounding off of benefits of disability/war injury element. Accordingly, the Records, the Brigade of the Guards, vide letter dated 30.06.2018 has requested all the Pension Disbursing Authorities to make payment of the revised rates of war injury element and arrears thereto in accordance with PCDA (P) Allahabad Circular Nos. 555 dated 04.02.2016 (OROP), 582 dated 05.09.2017 (7th CPC), 585 dated 21.09.2017 and 596 dated 09.02.2018 (rounding off) with effect from 01.01.2016.

5. Thus the admitted position is that the applicant is already getting war injury element of pension @ 40% for life with effect from 01.01.2004 and his prayer for rounding off of the same has not been granted.

6. In view of facts of this case the questions to be considered are two fold:-

(a) Is the applicant entitled to the benefit of rounding off of his war injury element of pension?

(b) If he is entitled, then the entitlement of benefits of rounding off will be effective from which date?

7. We have considered all the issues involved in this case and have gone through the relevant provisions. We do not agree with the contention of Ld. Counsel for the respondents that because the applicant has been released from service on completion of his terms of engagement and therefore he is not entitled to the benefit of rounding off and he would be entitled to the benefit of rounding off from 2016 as recently authorized by the Government.

8. This matter has been amply made clear in Chapter IV, para 4 of the Disability Pension Entitlement Rules, 1982, relevant extract of which is given below-

“4. Invaliding from service is a necessary condition for grant of a 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. JCOs/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 invalidated out of service.”

9. It is very clear that the applicant was denied further extension of service and transferred to pension establishment on 31.12.2003 (A.N.) in low medical category under Rule 13 (3) III (i) of Army Rule 1954 for the disability “**GUN SHOT WOUND (RT)**”

CHEST (OPTD) AND GUN SHOT WOUND (LT) HAND (OPTD)”, therefore in the light of provisions of Chapter IV, Para 4 of the Disability Pension Entitlement Rules, 1982 the applicant is deemed to be a case of invalidation entitling him for the benefit of rounding off as per Ministry of Defence letter dated 31.01.2001 and thus the war injury element of pension @ 40% is to be rounded off to 50%.

10. So far as second question formulated hereinbefore is concerned, the larger Bench of Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 1439 of 2016, **Ex Sgt Girish Kumar vs. Union of India & Ors** relying upon the decision of Hon’ble Apex Court in the case of **Davinder Singh vs. Union of India & Ors** (C.A. No. 9946 of 2016) decided on 20.09.2016 has held that the benefit of broad banding of disability/war injury element of pension will be with effect from 01.01.1996. The relevant portion of the Full Bench decision in the case of **Ex Sgt Girish Kumar** (supra) is reproduced as under :-

“55. After having fully discussed the issue involved before us and to set the controversy at rest vis-à-vis arrears of broad banding of the disability/war injury element of disability pension on the ground of delay in filing application(s) by the individual/applicant(s), we conclude grant of arrears of broad banding of disability pension, stands answered in the fact that all applicants will be entitled to broad banding of disability/war injury element of pension with effect from 01.01.1996, irrespective of whether they retired pre-1996 or post-1996 without any restriction of arrears of three years.”

11. The Original Application No. 299 of 2018 succeeds and is allowed. The applicant is entitled for benefit of rounding off and

shall be paid enhanced War Injury Element of pension by rounding off from 40% to 50% for life from 01.01.2004. The respondents are directed to pay enhanced War Injury Element of pension from 01.01.2004 alongwith the arrears within four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : November, 2018
dds