

RESERVED
Court No.1

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

Original Application No. 110 of 2018

Wednesday, this the 17th day of October 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

No. 7100027N (Ex Hav) Dinesh Pal S/O Shri Ram Diwan Pal, R/O Vill-Mathauli, PO-Bharwaliya, Thana-Lalganj, Distt-Basti (Uttar Pradesh).

..... Applicant

Ld. Counsel for the Applicant: **Shri VA Singh**, Advocate

Versus

1. Union of India and others through The Secretary Ministry of Defence South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ, PO: New Delhi-110011.
3. Officer Incharge, PCDA (P), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the : **Ms Amrita Chakraborty**
Respondents Central Govt Counsel.

ORDER**“Per Hon’ble Mr. Justice SVS 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:-

- (a) *To direct the respondents to consider Rounding-off of disability pension from 30% to 50% in light of the present rounding off policy (2001 policy) as applicable and issue fresh PPO with all previous balance with interest since 30.11.1987-Applicant’s date of discharge from service.*
- (b) *To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.*
- (c) *Allow this application with cost.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 16.11.1965 and discharged from service after rendering more than 22 years of service on 30.11.1987 in low medical category BEE (Phy) (permt) under Army Rule 13 (3) III (i). Release Medical Board (RMB) held on 05.06.1987 at the time of discharge assessed applicant’s disability ‘**NEPHRITIC SYNDROME 581**’ @ 30% for two years attributable to military service. But in the later years after regular review medical boards, the disability of the applicant was assessed @ 30% for life w.e.f. 16.10.2002 vide PPO dated 17.02.3003 which the applicant is in receipt of.

3. Ld. Counsel for the applicant submitted that the applicant is entitled to rounding off of disability pension from

30% for life to 50% for life in terms of ***Union of India & Ors vs Ram Avtar & Ors*** (Civil Appeal No 418 of 2012 decided on 10.12.2014).

4. On the other hand, Ld. Counsel for the respondents has conceded the receipt of 30% disability pension by the applicant but has declined rounding off benefits on the ground that the applicant was discharged from service on completion of terms of engagement whereas rounding off is entitled to personnel who are invalided out of service.

5. Heard learned counsel for the parties and perused the material placed on record.

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 dated 10th December 2014) wherein the Hon'ble Apex Court nodded in disapproval of policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who being in low medical category have retired on attaining the age of superannuation or on completion of their tenure 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.

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 30% disability pension for life. Hence in light of the settled law on this matter his disability @ 30% for life shall stand rounded off to 50% for life.

8. The date from which the benefit of rounding off has to be extended, has been settled by the Hon'ble Principal Bench, New Delhi in the case of ***Ex-Sgt Girish Kumar Vs Union of India & Ors*** (O.A. No. 1439 of 2017, decided on 01.12.2017). The operative portion of the aforementioned judgment is as under:-

"55. X x x x x

(i) *Armed Forces personnel who have been invalidated/superannuated/completed terms of service/discharged under normal circumstances with disability, pre or post 01.01.1996, (including the applicants) will be entitled to broad banding of disability/war injury element. 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 the case of those who retired on or after 01.01.1996 will be entitled to arrears with effect from the date of their retirement."

9. In view of the above, the applicant is entitled to the benefit of rounding off of disability element from 30% for life to 50% for life w.e.f. 01.01.1996. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The applicant shall be granted 50% disability element for life w.e.f. 01.01.1996 along with arrears. The whole exercise shall be completed by the respondents 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 : October, 2018
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