

RESERVED
Court No.1

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

Original Application No 488 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)

Raghaw Ram (JC-158075X Ex Sub Maj/Hony Capt), S/o
Shri Tulsi Ram, R/o Village Tulapur, Post Office-
Sindhura, Tehsil-Milkipur, District-Faizabad PIN-
224208(UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri R. Chandra**, Advocate

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. The Officer In-Charge, Artillery Records Nasik Road Camp-422102.
3. The CDA (P), Draupadi Ghat Allahabad -14(UP).

..... Respondents

Ld. Counsel for the : **Ms Amrita Chakraborty**
Respondents 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) *The Hon’ble Tribunal may kindly be pleased to direct the respondents to grant the benefit of rounding of disability pension to the applicant from 40% to 50% disability pension w.e.f. 01.06.2000(Date of discharge) alongwith the arrears including interest at the rate of 24 percent per annum.*
- (b) *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. The prayer relates to rounding off of disability pension which is a recurring cause of action, accordingly application for condonation of delay is allowed and delay in filing of O.A. is condoned.

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 18.01.1969 and discharged from service after rendering more than 31 years, 04 months and 14 days of service on 31.05.2000 in low medical category due to disability ‘FRACTURE FEMUR SHAFT and FRACTURE COLLES RT’ with disability @ 40% for life attributable to military service. This fact has also been established by the PPO dated 01.05.2002 **(Annexure No A-1 to the O.A.)**.

4. Ld. Counsel for the applicant submitted that the applicant is entitled to the benefit of rounding off of disability pension from 40% 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). However the respondents have denied the same to the applicant.

5. On 12.10.2018 Ld. Counsel for the respondents produced the original records and admitted that the applicant is in receipt of 40% disability element of pension for life. He also conceded that the benefit of rounding off has been denied to the applicant on the ground that he has not been invalided out of service.

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

7. 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 have been in low medical category and 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."

8. In the instant case, there is no dispute that the applicant is in receipt of 40% disability pension for life. This fact is also established from the copy of PPO filed on record. Hence he is entitled for the benefit of rounding off. Additionally, the date from which rounding off is to be effective has been settled by Hon'ble Principal Bench,

New Delhi vide judgment and order 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:-

- (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 40% for life to 50% for life w.e.f. date of discharge i.e. 01.06.2000. The Original Application deserves to be allowed, hence **allowed**. The applicant shall be granted 50% disability element for life w.e.f. date of discharge 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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