

RESERVED
Court No.1

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

Original Application No 56 of 2018

Friday, this the 26th day of October 2018

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

No. JC-372031-P Sub Om Prakash Singh, S/O Sri
Ramayan Singh, R/O Village Isharoo, Post-Bhagalpur,
Deoria.

..... Applicant

Ld. Counsel for the: **Shri B.B. Tripathi**, Advocate
Applicant

Versus

1. Union of India through the Secretary, Ministry of
Defence, Government of India, New Delhi.
2. Commanding Officer, Signal Records, Jabalpur-
482001.
3. The Principal Controller of Defence Accounts
(Pension), Draupadi Ghat, Allahabad-211014.

..... Respondents

Ld. Counsel for the : **Dr. Chet Narain Singh**
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:-

- (i) *This Hon’ble Tribunal may graciously be pleased to issue an order, direction and command to quash the office order dated 18.08.2017 contained in Annexure No 6.*
- (ii) *This Hon’ble Tribunal may graciously be pleased to issue an order, direction and command to issue a fresh PPO to the applicant by rounding off of the disability pension from 40% to 50% for life from the date of his discharge and to pay the enhanced disability pension and arrears thereof along with interest @ 12% on the amount accrued from due date will the date of actual payment.*
- (iii) *Issue such other order/direction which may be deemed just and proper in the circumstances of the case.*
- (iv) *Allow the Original Application with cost against the respondents in view of the facts and circumstances, legal provisions and grounds raised in the application.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 17.05.1985 and discharged from service after rendering 30 years and 15 days of service on 31.05.2015 (AN). Prior to discharge from service, the applicant was brought before Release Medical Board (RMB) held at Command Hospital (CC), Lucknow on 20.11.2014 which opined the applicant to be discharged in low medical category S1H1A1P2E1 (permt) due to disability '**Bronchial Asthma**' with disability

element @ 40% for life aggravated by military service. As per PPO held on record (**Annexure R-1**), the applicant is in receipt of 40% disability for life. The applicant preferred representation dated 15.12.2016 for rounding off of disability element from 40% to 50% but the same was not decided in time. Thereafter the applicant filed O.A. No 192 of 2017 in this Tribunal which was decided on 29.05.2017 with directions to the respondents to decide the representation of the applicant by passing a speaking and reasoned order within three months. The representation was decided and communicated to the applicant vide letter dated 18.08.2017 denying the rounding off of disability element. Hence this O.A.

3. Ld. Counsel for the applicant submitted that the applicant is entitled to the benefit of rounding off of disability pension from 40% to 50% 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 conceded that the applicant is in receipt of 40% disability element for life but emphasized that rounding of benefits of disability element is applicable to those personal who have been invalided out from service on medical grounds before completion of their service in terms of Govt. Of

India Ministry of Defence later dated 31.01.2001. The Ld. Counsel further submitted that the competent authority has rightly denied the rounding off benefits to the applicant.

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 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."

7. 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. 31.05.2015. 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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