

RESERVED
Court No.1

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

Original Application No. 669 of 2017

Monday, this the 08th day of October 2018

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

No. 4463223Y Ex Hav Satish Chander, S/O Shri Kheoraj Singh, R/O Vill-Bankharia, PO-Fatehgarh, Distt-Farrukhabad.

..... Applicant

Ld. Counsel for the: **Shri V.P. Pandey**, Advocate
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, 101, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter Ministry of Defence, South Block, New Delhi-110011.
3. Officer-in-Charge, Records, The Sikhli, PIN-900927, C/O 56 APO.
4. The Principal Controller Defence Account (P), Draupadi Ghat, Allahabad-211014.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**
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) *Issue/pass an order or direction of appropriate nature to the respondents to give the benefits of “rounding off” of the disability pensionary benefits from 20% to 50% as provided vide Government of India, Ministry of Defence letter No 1(2)/97/D(Pen-C) dated 31.01.2001 and circular No 429 dated 04.03.2010 supported by the position held by the Supreme Court. The applicant may be granted benefit of rounding off the disability pension w.e.f. 01.11.2008 i.e., from the date of discharge.*
- (b) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- (c) *Allow this application with exemplary cost.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 25.10.1982 and discharged from service after rendering 26 years and 07 days of service on 01.11.2008 in low medical category S1H1A1P2(P)E1 under Army Rule 13 (3) III (i). Release Medical Board (RMB) held at the time of discharge assessed the disability ‘Old Anterior Wedge Compression Fracture D5 and LV2, Retrolisthesis LV2, Over LV3, PVD LV3/4 with LCS LV1/2 and LV3/4 (M-50)” @ 20% for life attributable to military service. It is evident from the PPO No. DE/CORR/027384/2010 that the applicant is in receipt of

20% disability element of disability pension from the date of discharge.

3. Ld. Counsel for the applicant submitted that the applicant is entitled for rounding off of disability pension from 20% 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, Learned counsel for the respondents has conceded the receipt of 20% 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 have been invalided out of service on account of being in low medical category or who has retired on attaining the age of superannuation or completion of his tenure of engagement, if found to be suffering from some

disability. 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 20% disability pension for life. This fact is also established from the PPO (**Annexure No. R-3**) filed on record.

8. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The applicant is entitled to rounding off of disability element of disability pension from 20% for life to 50% for life from the date of discharge i.e. 01.01.2008 in view of aforementioned Apex Court judgment.

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 : October, 2018
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