

RESERVED
Court No.1

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

Original Application No. 692 of 2017

Friday, this the 12th day of October 2018

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

No. 6893561 Ex-Hav Prakash Singh of AOC, Vill-Amethi
Kona, PO-Fatehgarh, Distt-Farrukhabad (U.P.).

..... Applicant

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

Versus

1. Union of India through Secretary, Min of Defence,
New Delhi.
2. Chief of the Army Staff, Army HQ (Sena Bhawan),
New Delhi-11.
3. OIC the AOC Records, PIN-900453, C/O 56 APO.
4. PCDA (P), Draupadi Ghat, Allahabad (U.P.).

..... Respondents

Ld. Counsel for the
Respondents

:Shri Anurag Mishra
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) *An order or direction directing the respondents to pay the applicant the full arrears of rounding off of the disability pension (50%) since the due date 31.10.1987 @ 9% interest on arrears till the date of the payment.*
- (b) *An order or direction allowing the OA with costs.*
- (c) *Any other or further order or direction which this Hon’ble Court may deem just, fit and proper in the circumstances of the case and in the interest of the justice.*

2. Briefly stated facts of the case are that the applicant was enrolled in the Indian Army on 08.10.1965 and discharged from service after rendering 22 years of service on 31.10.1987 in low medical category under Rule 13 (3) III (i) of the Army Rules 1954. The applicant is in receipt of 20% disability pension for life.

3. Ld. Counsel for the applicant argued that since the applicant is already in receipt of 20% disability pension for life therefore in view of judgment in O.A. No. 242 of 2014, **Ex Havi Jai Singh vs Union of India & Ors**, decided by AFT, Regional Bench, Lucknow on 07.09.2015 the applicant is also entitled to rounding off of disability pension @ 50% disability pension for life.

4. On the other hand, though Ld. Counsel for the respondents conceded receipt of 20% disability pension by the applicant but contended that the applicant is not entitled to rounding off of disability pension as the applicant was not invalided out of service and submitted that the benefits of rounding off is applicable to those personnel whose services were cut short and invalided out prior to completion of terms of engagement.

5. We have heard Ld. 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 decided on 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 has also been accepted by the respondents. Thus the applicant is entitled the benefit of rounding off. Additionally the issue of the date from which the benefit of rounding off will be applicable 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."

8. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The applicant is entitled to rounding off of disability pension from 20% for life to 50% for life w.e.f. 01.01.1996. 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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