

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION NO 247 of 2017**Tuesday, this the 29th day of August, 2017**Hon'ble Mr. Justice D.P. Singh, Member (J)****Hon'ble Air Marshal Anil Chopra, Member (A)**

No 13904131Y Rank-Ex Nk Virendra Nath Shukla S/O Late Nathu Ram Shukla, R/O 22/53, Indra Nagar, Lucknow (UP).

....Applicant

Versus

1. Union of India, through the Secretary, Min of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarter, Ministry of Defence, South Block, New Delhi.
3. The Officer-in-Charge, Sena Chikitsa Abhilekh Karyalaya, AMC Records, Lucknow-226002.
4. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (UP).

.....Respondents

Counsel for applicant :**Shri Parijat Belaura, Advocate.**
Mrs Kavita Belaura, Advocate.

Counsel for respondents:**Shri D.K. Pandey, Advocate.**

Assisted by :**Maj Salen Xaxa, OIC Legal Cell.**

ORDER (ORAL)

1. The instant Original Application has been filed by of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007,

whereby the applicant has sought rounding off of disability pension from 20% for life to 50%.

2. The delay in filing the O.A. has been condoned by this Tribunal vide order dated 14.07.2017. Counter affidavit has been filed by Ld. Counsel for the respondents. Ld. Counsel for the applicant does not intend to file rejoinder affidavit.

3. We have heard learned counsel for the parties and perused the records.

4. Brief facts of the case are that the applicant joined the Indian Army on 23.12.1964 and discharged from service on 31.12.1983 in low medical category on fulfilling the terms of engagements. The applicant was granted disability pension @ 20% for two years. The Release Medical Board opined the disability as not attributable to but aggravated by military service. Subsequently Re-survey Medical Board was held at Base Hospital, Lucknow on 21.08.2002. In the opinion of Re-survey Medical Board applicant's disability was assessed @ 20% for life as per pleadings made in para 5 of the counter affidavit. The applicant represented his case, but to no avail.

5. Learned counsel for the applicant submitted that the applicant has been granted 20% disability pension for life by the Re-survey Medical Board, but he has been denied the benefit of various decisions of this Tribunal and Hon'ble Apex Court relating to rounding off of disability pension.

6. **Per contra**, the learned counsel for the respondents has submitted that since the applicant was discharged from the service on fulfilling of his terms and engagement and is not eligible for the

rounding off of disability pension in terms of Government of India, Ministry of Defence letter No. 1(2)/97/D (Pen-C) dated 31.01.2001.

7. We feel to recall the judgment of Hon'ble Apex Court in the case of **K.J.S. Buttar vs. Union of India and others reported in SCC 2011, XI, 429** wherein Hon'ble Apex Court has observed that a person who was discharged by retirement on completion of terms of service with a disability, was held to be 'invalided out' and was held entitled to the benefit of 'broad banding'. Hon'ble the Apex Court in Paras 17 & 18 of the judgment of **K.J.S. Buttar** (supra) has observed as under:-

"17. The respondents submitted that the appellant was not entitled to the above benefits as he had retired on completion of his Short Service Commission of 10 years and had not been invalided out of service.

18. In this connection it may be mentioned that the appellant was invalided out and released in a low medical category with permanent disability assessed at 50% by the Release Medical Board. As per the Defence Services Regulations/Pension Regulations for the Army 1961 where any officer is found suffering from disability attributable to or aggravated by Military Service he shall be deemed to have been invalided out of service. Relevant provision (page 25 additional documents) read as under :-

53. Officers Compulsorily Retired on Account of Age or on Completion of Tenure.

(1) An officer retired on completion of tenure or on completion of terms of engagement or on attaining the age of 50 years (irrespective of their period of engagement), if found suffering from a disability attributable to or aggravated by military service and recorded by service medical authorities, shall be deemed to have been invalided out of service and shall be granted disability pension from the date of retirement, if the accepted degree of disability is 20% or more, and service element, if the degree of disability is less than 20%. The retiring pension/retiring gratuity, if already sanctioned and

paid, shall be adjusted against the disability pension/service element, as the case may be.

(2) The disability element referred to in clause (1) above shall be assessed on the accepted degree of disablement at the time of retirement/discharge on the basis of the rank held on the date on which the wound/injury was sustained or in the case of disease. In our opinion the appellant is entitled to the benefit of the above Regulation.”

8. It is also observed that the Hon'ble Apex Court in **Review Petition (C) No. 2688 of 2013 in Civil Appeal No. 5591/2006, U.O.I. & ANR vs K.J.S. Buttar** has dismissed the Review Petition both on ground of delay as well as on merits on 21.01.2014.

9. On the issue of rounding off of the disability pension, we feel to recall the judgment and order of Hon'ble Apex Court of **Union of India and Ors vs Ram Avtar & ors (Civil Appeal No. 418 of 2012 dated 10th December 2014)** in which Hon'ble Apex Court nodded in disapproval the policy of the Government of India in not granting the benefit of rounding off of disability pension to the personnel who have retired on attaining the age of superannuation or completion of their terms of engagement, if found to be suffering from some disability.

10. In view of the directions given by Hon'ble Apex Court in the cases of **K.J.S. Buttar vs. Union of India & others** (supra) and **Union of India & others vs. Ram Avtar** (supra), we are of the considered view that in conformity with the Rules, Regulations and the dictum of law laid down by Hon'ble the Apex Court, the applicant is entitled to the benefit of rounding off of disability pension to 50%.

11. The O.A. succeeds and is **allowed**. The applicant is entitled to grant of disability pension @ 20% which is further rounded off @

50% for life from three years prior to filing of the Original Application i.e. 09.03.2014. The respondents shall pay the enhanced disability pension along with the arrears within four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated : 29.08.2017
anb