

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION NO 266 of 2017**

Tuesday, this the 29<sup>th</sup> day of August, 2017

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

No 3178275X Ex Nk Bijendra Singh, S/O Sri Jaipal Singh, R/O Vill-Rijhora, Post Office-Sahkari Nagar, Distt-Buland Shahar (UP).

....Applicant

Versus

1. Union of India, through its Secretary, Min of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Officer-in-Charge, Records, The JAT Regiment, PIN-900496, C/O 56 APO.
4. PCDA (Pension), Allahabad.

.....Respondents

Counsel for applicant :**Shri K.K. Mishra, Advocate.**

Counsel for respondents :**Shri A.N. Tripathi, 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 grant of disability pension and rounding off of disability pension from 11 – 14% to 50%.

2. The delay in filing the O.A. has been condoned by this Tribunal vide order dated 25.07.2017. Counter affidavit has been filed by the

respondents. Learned counsel for the applicant denied 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 16.05.1984. In September 1998 the applicant developed health problem and was admitted in Military Hospital, Meerut. On investigation the applicant was found to be suffering from MULTIPLE LIVER ABSCESS-572 (A) and was transferred to Command Hospital, Central Command. The Medical Board opined the applicant to place him in medical category BEE (T) and he was sent on sick leave. By a subsequent Medical Board he was placed in medical category BEE (P). In January 2000, applicant was again subjected to Release Medical Board held at Base Hospital, Meerut. The Release Medical Board recommended the applicant to be discharged from service on medical grounds. The Release Medical Board assessed the disability @ 11-14% for ten years. The disability was opined to be attributable to military service. (Exhibit P-3 to the counter affidavit). On 13.06.2001 applicant preferred disability pension claim which was rejected by PCDA (P), Allahabad on 17.08.2001 (Exhibit P-5 to the counter affidavit) on the ground that disability was assessed less than 20%. On the recommendation of Release Medical Board the applicant was discharged from service on 31.03.2001 under rule 13 (3) III (v) of Army Rules, 1954.

5. Learned counsel for the applicant submitted that the applicant has been granted 11 - 14% disability pension for ten years by the

Release 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. Ld. Counsel for the applicant relied upon Govt. of India, Min of Def letter No 1(2)/97/D (Pen-C) dated 31.01.2001.

6. Ld. Counsel for the respondents fairly admitted that disability pension is applicable to the applicant in view of Government of India, Ministry of Defence letter No. 1 (2)/97/D(Pen-C) dated 31.01.2001 which provides that disability below 50% shall be rounded off to 50%.

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 invalidated 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 10<sup>th</sup> 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 tenure 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 disability pension which is further rounded off @ 50% from three years prior to filing of the Original Application i.e. 29.01.2014. The respondents are further directed to refer the applicant's case to Re-survey Medical Board for further entitlement of disability pension. 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