

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION NO 316 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)

IC-49700X Lt Col Rajesh Tiwari S/O Shri S.N. Tiwari, House No 39
 Pandit Din Dayal Upadhyay Nagar, Arjun Ganj, Lucknow.

....Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of Ministry of Defence (Army), DHQ, PO: New Delhi-110011.
3. Director AG/PS-4 (Imp-1) For Adjutant General, Additional Directorate General Personal Services, Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), Plot No 108 (West Brassy Avenue, Church Road), New Delhi.

.....Respondents

Counsel for applicant :**Shri VA Singh, Advocate.**

Counsel for respondents :**Dr. Shailendra Sharma Atal, 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 the relief for rounding off of disability pension from 30% to 50% for life.

2. The O.A. has been preferred with delay of 1 year, 11 months and 25 days. The delay in filing the O.A. has been condoned by this Tribunal vide order dated 16.08.2017.

3. The applicant has preferred the present O.A. for the relief of granting and further extending the benefit of rounding off of the disability pension. Undisputed facts of the case, agreed by both learned counsel for the parties, are that the applicant was commissioned in the Indian Army on 09.06.1990. The applicant was placed in medical category P2 (T) for the disease Primary Hypertension. Subsequently on 27.07.2014 the applicant was re-assessed by the Re-Survey Medical Board which placed him in medical category P2 (P) with 30% disability for life. Feeling aggrieved on 30.06.2016 the applicant preferred a statutory complaint for granting him disability pension and further to provide him benefit of rounding off of the disability pension which was rejected vide order dated 24.08.2016 on the ground that benefit of broad banding is only applicable to the Armed Forces personnel who are invalided out of service and since the applicant was not invalided out of military service, hence benefit of rounding off would not be applicable to him.

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel for the applicant submitted that the applicant was commissioned in the Indian Army in medically fit condition his low medical category was attributable to and aggravated by military

service, and as such, he has been granted 30% disability element for life by the Release Medical Board. Learned Counsel further submitted that the applicant is entitled to disability pension and benefit of its rounding off in view of various decisions of this Tribunal and Hon'ble Apex Court relating to rounding off of disability pension.

6. In the instant case no counter affidavit has been filed. Since question of payment of disability pension has been settled by Hon'ble Apex Court in a catena of decisions and the same is no more res integra, hence with the consent of learned counsel for the parties and without calling for counter affidavit, we proceed to hear and decide the case finally at this stage itself.

7. The disability has to be considered as attributable to and aggravated by military service in terms of judgment of ***Dharamvir Singh vs. Union of India and others***, reported in (2013) 7 SCC 316, ***Sukhvinder Singh vs. Union of India***, reported in (2014) 14 SCC 364, ***Union of India and others vs. Angad Singh Titaria***, reported in (2015) 12 SCC 257 and ***Union of India and others vs. Rajbir Singh*** reported in (2015) 12 SCC 264 and the applicant is considered entitled for grant of disability pension.

8. On the issue of rounding off, 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) 11 SCC 429 wherein Hon'ble Apex Court has observed that a person who was discharged 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 invalidated out of service.

18. In this connection it may be mentioned that the appellant was invalidated 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 invalidated 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. Hon’ble Apex Court of in the case of **Union of India and Ors vs Ram Avtar & ors** (Civil Appeal No. 418 of 2012 dated 10th December 2014) disapproved 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**. Order dated 24.08.2016 (Annexure-1 to the O.A.) is set aside. Respondents are directed to grant benefit of rounding off and pay disability pension to the applicant by extending the benefit of rounding off @ 50% for life from three years prior to filing of the Original Application i.e. from 12.12.2013. The respondents are directed to 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

