

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION NO 364 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 JC-213746 Ex Sub Om Prakash Sharma S/O Shri Pothi Ram
 Resident of 371, Senani Vihar (Telibagh), Rae Bareilly Road,
 Lucknow.

....Applicant

Versus

1. The Union of India, through the Secretary Ministry of Defence, (Army), New Delhi-110011.
2. The Chief of the Army Staff, IHQ of MoD (Army) Army HQ, South Block, New Delhi-110011.
3. Officer-in-Charge Records, EME Records, Secunderabad, Pin-900453, C/O 56 APO.
4. PCDA (P), Draupadighat, Allahabad.

.....Respondents

Counsel for applicant : **Smt Kavita Singh, Advocate.**

Counsel for respondents : **Ms Amrita Chakraborty, 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 17 yrs 4 months and 02 days. Learned counsel for the applicant at the very outset submitted that the matters relating to payment of disability pension inhibit in itself recurring cause of action, as such, the delay in preferring the O.A. deserves to be condoned. We find much force in the argument advanced by learned counsel for the applicant and in view of the law on the issue; we condone the delay in preferring the O.A. With the consent of learned counsel for the parties, we proceed to hear and dispose of the O.A. finally at this stage.

3. The applicant is in receipt of disability pension in pursuance of opinion of Release Medical Board. He has filed the present O.A. for the relief 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 enrolled in the Indian Army on 04.08.1971 and retired from service on 31.08.1999 in low medical category with 30% disability for life assessed by the Release Medical Board. The applicant approached the respondents for benefit of rounding off of disability pension from 30% to 50%, but in vain.

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

5. Learned counsel for the applicant submitted that the applicant has been granted 30% disability pension for life 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.

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 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**. Orders dated 31.10.2016, 30.01.2017 and 21.04.2017 (Annexure Nos 3, 2, and 1) are set

aside. The applicant is entitled for benefit of rounding off and shall be paid disability pension by extending the benefit of rounding off @ 50% for life from the date of filing of the petition i.e. 05.07.2014. 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
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