

**RESERVED**  
**Court No.1**

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

**Original Application No. 69 of 2019**

Monday, this the 30<sup>th</sup> day of September, 2019

**Hon'ble Mr. Justice Virender Singh, Chairperson**  
**Hon'ble Air Marshal B.B.P. Sinha, Member (A)**

No. JC-418995-L, Ex. Sub. Mahendra Pratap S/o Late Jagat Pal Singh, R/o MIG-II-79, Tatyatope Nagar, Phase-III, District Kanpur.

..... Applicant

Ld. Counsel for the: **Shri Parijaat Belaura,**  
Applicant Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Head Quarters, Ministry of Defence, South Block, New Delhi.
3. Officer-in-Charge, Records, the Mech. Inf. Regt. Pin No.-900476, C/o 56 APO.
4. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (U.P.).

..... Respondents

Ld. Counsel for the Respondents **:Shri Ashish Kumar Singh,**  
Central Govt Counsel.

**ORDER****“Per Hon’ble Air Marshal B.B.P. 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:-

- “(I) *To round off the Disability Pension from 20% to 50% and War Injury Pension from 40% to 50% as per GOI, MoD letter 31.01.2001 w.e.f. 01.01.1996.*
- (II) *To pay arrear of difference along with 12% interest from the date of his release i.e. 01.01.2007 till it is actually paid.*
- (III) *Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.”*

2. Briefly stated facts of the case are that the applicant was enrolled in Signal Corps in Army on 25.12.1978 and was discharged in the rank of Naik in low medical category on 31.12.2006. The Release Medical Board held at 184 Military Hospital on 03.06.2006 identified his disability as “(i) **‘COMPOUND FRACTURE TIBIA FIBULA UPPER 1/3<sup>rd</sup> WITH POPULTEAR NERVE PALSY (LT)’** @40% life as attributable to military service and as a war injury and (ii) **‘TYPE-II DIABETES MELLITUS’** @20% for life as aggravated by military service, Composite assessment @60% for life. Accordingly, his War Injury Element @40% for life and disability element @20% for life have been separately notified vide P.P.O. No.D/BC/CORR/0565/2010 dated 10.01.2011 issued by PCDA (P), Allahabad. He has also been issued revised P.P.O. dated 26.09.2017 in terms of Seventh Pay Commission which is applicable w.e.f. 01.01.2016. The applicant preferred an application for benefit of rounding off of 40% War Injury Pension to 50% and rounding off of 20% of Disability Element to 50%, but of no avail. Presently the applicant is in receipt of War Injury Element @40% for life and Disability Element @20% for life and has moved this Original Application for the benefit of rounding off.

3. Ld. Counsel for the applicant argued that since the applicant is already in receipt of War Injury Element @40% for life and Disability Element @20% for life therefore in view of judgment in O.A. No. 328 of 2016, **Colonel Dharam Raj Singh (Retd)**, decided by Armed Forces Tribunal, Regional Bench, Lucknow on 07.09.2016 and Hon’ble Apex Court judgment in the case

of *Union of India and Ors vs Ram Avtar & ors* (Civil appeal No. 418 of 2012 decided on 10<sup>th</sup> December 2014), the applicant is also entitled to benefit of rounding off of War Injury Element @ 50% for life and Disability Element @50% for life.

4. On the other hand, though Ld. Counsel for the respondents conceded receipt of War Injury Element @40% for life and Disability Element @20% for life by the applicant but contended that the applicant is not entitled to the benefit of rounding off of disability pension on the ground that the applicant's services were not cut short as he was not invalidated out on account of his disabilities. In the instant case the applicant was discharged from service on completion of his terms of engagement, therefore, the Ld. Counsel claimed that he is not eligible for the benefit of rounding off of disability element and war injury element prior to 01.01.2016. However, it he conceded that as per new policy of the respondents on rounding off the applicant is eligible for 50% rounding off disability element with effect from 01.01.2016 and that the matter is being processed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. In the present case the only question which needs to be answered is whether the applicant is entitled for the benefit of rounding off of his war injury element pension as well as disability element of pension?

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 10<sup>th</sup> December 2014) wherein the Hon'ble Apex Court has nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalidated out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision 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. This is a unique case where the applicant is getting 40% war injury element for the disability acquired during Srilanka operations and additional 20% normal disability element due to a disability aggravated by military service. Since the respondents have no existing policy on how to provide 60% composite disability element when 40% is war injury element and 20% is normal disability element, P.C.D.A. (Pension), Allahabad has issued two separate P.P.O.s for the two disabilities at two separate notes as applicable to war injury element and disability element.

8. In this above situation the stand of respondents is not very clear wherein initially they have submitted that the applicant is not entitled to the benefit of rounding off because he was not invalided out of service and subsequently they have conceded that as per new policy on rounding off the applicant is eligible for rounding off w.e.f. 01.01.2016 the matter is being processed.

9. In view of the above we are of the opinion that we can't leave the matter of a battle casualty and war injury related disability pension at the mercy and discretion of respondents who despite a clear policy to grant benefit of rounding off w.e.f. 01.01.2016 are still considering the matter at the end of 2019. Thus we hold that the applicant as a battle casualty is entitled to the best under the existing rules. Hence, his war injury element @40% is rounded off to @50% for life w.e.f. the date of discharge. Similarly, his disability element @20% is rounded off to 50% for life w.e.f. his date of discharge.

10. Additionally, it may be observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, para-9, Hon'ble Apex Court has observed:

*“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”*

11. As observed in the preceding paragraphs, delay in filing the O.A. has been condoned by this Tribunal vide order dated 28.01.2019, as such, in view of the decision of Hon’ble Supreme Court in the case of *Shiv Dass (supra)*, we are of the considered view that arrears of war injury element and disability element after rounding off of war injury element @50% for life and disability element @50% for life be paid to the applicant from three preceding years the date of filing of the Original Application.

12. In view of the above, the **Original Application No. 69 of 2019** deserves to be allowed, hence **allowed**. The applicant is entitled to the benefit of rounding off of war injury element from 40% to 50% for life and disability element from 20% to 50% for life with effect from three years preceding the date of filing of this Original Application. The date of filing of this Original Application is 19.07.2018. 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 till actual payment.

No order as to costs.

**(Air Marshal B.B.P. Sinha)**  
**Member (A)**

**(Justice Virender Singh)**  
**Chairperson**

Dated : September, 2019

AKD/-