

**RESERVED****COURT NO.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 190 of 2018**

Tuesday, this the 22nd day of May, 2018

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

No 13988843-K Ex NK/NA Satyendra Kumar Mishra S/o Shri Kamleshwar Mishra, R/o Village – Ghusari, Post – Padari Bazar, District – Deoria- 274701, (U.P.)

**.... Applicant**

**Counsel appeared - Shri R. Chandra, Advocate**  
**for the applicant**

Versus.

1. Union of India, through the Secretary, Ministry of Defence, New Delhi- 110011.
2. Officer-In-Charge, AMC Records, Lucknow – 2260002 (U.P.)
3. The Chief Controller Defence Accounts, Draupadi Ghat Allahabad – 14 (U.P.)

**.....Respondents**

**Counsel appeared for - Shri Ashish Kumar Singh, Advocate,**  
**Respondents Assisted by Maj Salen Xaxa,**  
**OIC Legal Cell.**

**ORDER****(Per Hon'ble Air Marshal BBP Sinha, Member (A))**

1. Being aggrieved by the denial of rounding off of disability pension from 80% to 100%, the applicant has approached this Tribunal by means of present O.A. Accordingly, this Original Application has been filed

under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for following relief:-

“(I) The Hon’ble Tribunal may kindly be pleased to direct the respondents to grant the disability pension to the applicant @ 100 percent w.e.f. date of discharge alongwith the arrears including interest at the rate of 24 percent per annum.

(II) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.”

2. The brief facts of the case, as borne out from the pleadings of the parties are that the applicant was enrolled in Army Medical Corps, for brevity ‘AMC’ as Nursing Assistant on 08.06.1994. He was discharged after rendering 22 years and 23 days’ service on 30.06.2016 in low medical category with 80% disability for life, vide PPO No. S/CORR/52732/2016 dated 13.12.2016. At the time of discharge from service the applicant was in low medical category for disability viz **(i) Post Traumatic Amputation above elbow (It) & (ii) Post traumatic Epilepsy**. The Release Medical Board viewed his aforesaid disability as attributable to Military service.

3. Feeling aggrieved against the inaction of the respondents in not rounding off of his disability pension from 80% to 100% pursuant to Hon’ble Supreme Court decision, applicant preferred an appeal on 05.06.2017 before the respondents for rounding off his disability pension. Thereafter also applicant preferred a representation dated 01.11.2017. When the applicant did not receive any reply to the aforesaid appeal as well as representation, he approached the respondent no.2 personally in December, 2017. Applicant was told orally that since he was discharged

after completion of his normal term of service, he is not entitled for the benefits of rounding off of his disability pension.

4. The Release Medical Board held on 09.01.2016 before discharge assessed his aforesaid disability as attributable to Military service, opining the disability of the applicant as 80% for life. Accordingly, the Applicant was sanctioned disability pension at the rate of 80% for life.

5. We have heard learned counsel for the applicant as also, Ld. Counsel for the respondents and perused the record. We have also perused the PPO (Annexure –R-5 to counter affidavit to O.A) vide which the applicant is in receipt of 80% disability pension.

6. In the instant case, the respondents have filed the counter affidavit, admitting in Para- 5 of the counter affidavit that the applicant is entitled for rounding off of disability element of disability pension keeping in view the Apex Court judgment in the case of **Union of India & others vs. Ram Avtar, Civil Appeal No. 418 of 2012** decided on 10.12.2014 and also that he is getting disability pension @ 80% till date. During arguments also, the learned counsel for the respondents has conceded that the applicant is in receipt of 80% disability pension. According to the applicant as per policy of Broad Banding Rounding Off Pension Scheme of the respondents the incumbent whose disability percentage is more than 75% is to be rounded off to 100% and is therefore entitled to get disability pension @ 100%.

7. On the issue of rounding off of disability pension the law is no more RES INTEGRA. Accordingly, we are of the opinion that the instant case falls within the four corners of the decision in the case of **K.J.S. Buttar vs Union of India and ors**, (2011)11 SCC 429 and Review Petition (C)

NO. 2688 of 2013 in Civil Appeal No. 5591/2006, ***Union of India & anr vs. K.J.S. Butter*** and ***Union of India vs. Ram Avtar & ors*** (Civil Appeal No. 418 of 2012 decided on 10<sup>th</sup> December, 2014. Thus the applicant is entitled for rounding off of his disability pension from 80% for life to 100% for life.

8. In view of the above, the Original Application deserves to be allowed. Accordingly the O.A. is **allowed**. The disability pension which was assessed as 80% for life shall stand rounded off to 100% for life from the date of discharge i.e. 30.06.2016. The respondents are further 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. 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. There shall be no order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

Dated: May 22, 2018  
JPT/-

**(Justice S.V.S.Rathore)**  
**Member (J)**

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No 1**

**O.A. No. 190 of 2018**

**Satyendra Kumar Mishra** Applicant  
 By Legal Practitioner for the Applicant  
**Versus**

**Union of India & Others** Respondents  
 By Legal Practitioner for Respondents

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>22.05. 2018</u></b>  <b><u>Hon'ble Mr. Justice S.V.S. Rathore, Member (J)</u></b>  <b><u>Hon'ble Air Marshal B.B.P. Sinha, Member (A)</u></b></p> <p style="text-align: center;">Judgment pronounced.            O.A. is <b>allowed</b>.            For orders see our order of date passed on separate sheets.</p> <p style="text-align: center;"> <b>(Air Marshal B.B.P. Sinha)</b> <span style="float: right;"><b>(Justice S.V.S. Rathore)</b></span>  <b>Member (A)</b> <span style="float: right;"><b>Member (J)</b></span> </p> <p>JPT</p>