

**RESERVED****COURT NO.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 368 of 2017**

Friday, this the 13<sup>th</sup> day of July, 2018

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

Col (Retd) Dinesh Pratap Singh, Son of Chandra Bhan Singh, resident of house No. B-172, Rajajipuram, Lucknow- 226017 U.P.

**.... Applicant**

**Ld. Counsel appeared - Shri A.K. Singh, Advocate  
for the applicant**

Versus.

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, Army Headquarters South Block, DHQ, PO New Delhi.
3. Additional Director General, Personnel Service, Adjutant General Branch/PS-4 (Imp-II) Integrated Headquarters of MOD (Army) New Delhi- 110001.
4. PCDA-O (Pension), Draupadi Ghat, Allahabad- 211024

- **..Respondents**

**Ld. Counsel appeared - Shri Virendra Singh, Advocate  
for the Respondents**

**ORDER**

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

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant for following relief:-

“ (1) issue an appropriate order or direction to the Respondents to issue Corrigendum PPO authorizing disability element @ 50% for life from the date of retirement i.e. 01.11.2014, with interest of 10% on arrears, in accordance with the apex court judgment in the case of UOI & Ors Vs. Ram Avtar dated 10 Dec. 2014.

(2) issue any other order or direction as the this Hon'ble Tribunal may deem fit in the circumstances of the case.

(3) allow the original application with costs. ”

2. The brief facts of the case are that the applicant was commissioned in the Indian Army on 19.12.1981 and retired on superannuation after completing the service of 32 years and 10 months on 31.10.2014 in the Rank of Colonel. The Release Medical Board (RMB) assessed the disability 'GOUTY ARTHRITIS' of the applicant as 20% for life, attributable to military service. A copy of proceedings of the Release Medical Board has been annexed by the applicant as Annexure No. A-3 to the O.A. The applicant is drawing service pension on retirement w.e.f. 01.11.2014 and disability element w.e.f. 01.11.2014 @ 20% for life. The case of the applicant is that though he had represented vide letters dated 15.01.2017, 01.03.2017 and 11.04.2017 to Army Headquarters for rounding off of his disability pension from 20% to 50% in the light of the judgment and order of Hon'ble Supreme Court but without any response. The service pension PPO and disability element PPO have been annexed by the applicant as Annexures No.A-4 and A-5 respectively to the O.A.

3. Being aggrieved by not rounding off of disability pension from 20% to 50%, the applicant has approached this Tribunal by means of present O.A., accompanied with an application for condonation of delay, which has been condoned vide order dated 29.08.2017.

4. 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 No. A-4tothe O.A) vide which the applicant is in receipt of 20% disability pension.

5. In the instant case, the respondents have conceded that the applicant is in receipt of 20% disability pension. This fact is also established from the PPO (Annexure No. A-4tothe O.A) vide which the applicant is in receipt of 20% disability pension. However, the respondents have refuted his eligibility for benefit of rounding off before 2016. Hence we proceeded to decide the matter on the basis of material available on record.

6. On the issue of rounding off of disability pension, we are of the opinion that the instant case falls within the four corners of the decision by Hon'ble Apex Court 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. Hence, in view of the well settled law on this matter the disability element of pension @ 20% for life should stand rounded off to 50% for life.

7. As to the period of entitlement of the applicant to receive arrears of disability pension, the larger Bench of Armed Forces Tribunal, Principal Bench, New Delhi in O.A. No. 1439 of 2016, ***Ex Sgt Girish Kumar vs. Union of India &Ors*** relying upon the decision of Hon'ble Apex Court in the case of ***Davinder Singh vs. Union of India &Ors*** (C.A. No. 9946 of 2016) decided on 20.09.2016 has held that the benefit of broad banding of disability/war injury element of pension will be with effect from 01.01.1996.

The relevant portion of the Full Bench decision in the case of **Ex Sgt Girish Kumar** (supra) is reproduced as under :-

*“55. After having fully discussed the issue involved before us and to set the controversy at rest vis-à-vis arrears of broad banding of the disability/war injury element of disability pension on the ground of delay in filing application(s) by the individual/applicant(s), we conclude grant of arrears of broad banding of disability pension, stands answered in the fact that all applicants will be entitled to broad banding of disability/war injury element of pension with effect from 01.01.1996, irrespective of whether they retired pre-1996 or post-1996 without any restriction of arrears of three years.”*

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 20% for life shall stand rounded off to 50% for life from the date of release of the applicant i.e. 01.11.2014. 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.

10. There shall be no order as to cost.

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

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

Dated: July 13, 2018  
JPT/-

