

RESERVED**COURT NO.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 531 of 2017**Monday, this the 09th day of July, 2018**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**
Hon'ble Air Marshal BBP Sinha, Member (A)

Ex- Colonel Kameshwar Chaudhary (IC- 36971) last posted at Headquarter Central Command, Lucknow, Son of Late R.P. Chaudhary, presently residing at House No. 5/305, Viram Khand, Gomtinagar, Distt- Lucknow (U.P.) – 226010

.... Applicant**Ld. Counsel appeared for the applicant** - **Shri D.S. Tiwari, Advocate**

Versus.

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi – 110011.
3. General Officer Commanding-in-Chief, Central Command, Lucknow Cantt.
4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad.

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

“ (a) Issue/ pass an order or direction of appropriate nature to the respondents to give the benefits of “rounding-off” of the disability pensionary benefits to the applicant by granting 50% disability pension to him as provided vide Government of India, Ministry of Defence letter No. 1(2)/ 97/D (Pen-C) dated 31.01.2001 supported by the position held by the Supreme Court.

(b) Issue/ pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.

(c) Allow this application with costs. ”

2. The brief facts of the case, as stated by both the parties are that the applicant was granted Short Service Commission in the Indian Army on 19.03.1982 and permanent Commission on 19.03.1982 in medically fit condition. He was released from service with effect from 31.12.2006. The Release Medical Board (RMB) of the applicant was held at Military Hospital, Danapur in August, 2006. The RMB assessed the disability of the applicant as 40% for life and opined it to be neither attributable to nor aggravated by military service. His first and second appeals for grant of disability pension were also rejected. Being aggrieved the applicant has filed O.A. No. 66 of 2011 before this Tribunal. The aforesaid O.A. of the applicant was allowed vide judgment and order dated 12.02.2015 and the applicant was held entitled to 40% disability pension, which has been granted to him and PPO has been issued for the same. Consequent upon the aforesaid judgment the applicant applied vide letter dated 23.02.2015 for rounding off of his disability pension, but of no avail.

3. Being aggrieved by denial of rounding off of disability pension from 40% 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 15.11.2017.

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 –A-1 to the O.A) vide which the applicant is in receipt of 40% disability pension.

5. In the instant case, the respondents have not filed the counter affidavit despite having been given a last chance for the same. However, during arguments, the learned counsel for the respondents has conceded that the applicant is in receipt of 40% disability pension. This fact is also established from the PPO (Annexure –A-1 to the O.A) vide which the applicant is in receipt of 40% disability pension. 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 10th December, 2014. Hence, in view of the well settled law on this matter the disability element of pension @ 40% 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 40% for life shall stand rounded off to 50% for life from the date of release of the applicant i.e. 01.01.2007. 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 09, 2018
JPT/-