

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

11.

O. A. No. 93 of 2011

Ex. Nb. Sub. Diwan Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. R. S. Kalkal, Advocate.

For respondents: Sh. Anil Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

20.09.2011


The petitioner, by this petition has prayed that the letter dated 30.10.2010 may be quashed and the respondents may be directed to pay the disability element of pension of the rank of Nb. Sub. w. e. f. 1.8.1992 and also pay the rounding of disability element of the rank of Nb. Sub. w. e. f. 1.1.1996 to the petitioner with interest.

2. The petitioner was enrolled in the Indian Army on 31.1.1977 and he was found medically fit by the recruiting Medical Board in all respects. He was down graded in 1992 and the petitioner was Nb. Sub. in 1992. However, the petitioner was invalided out of service being medically low category (Permanent) w. e. f. 1.8.1992. the petitioner was given service element of pension of Nb. Sub. and disability element of Havildar and the petitioner is still getting the same. The


Government of India Ministry of Defence issued a circular for rounding up of disability element for the benefit of army pensioners. Thereafter, the Ministry of Defence issued a circular dated 19.1.2001 for rounding up of disability element for the benefit of army pensioners, who have retired post 1.1.1996. Thereafter this cap was removed by order dated 19.1.2001 that those who have retired prior 1.1.1996 will be entitled to rounding up of disability. The petitioner was given disability pension @ 20%. Therefore, the petitioner has filed this petition with the prayer that his pension should be rounded upto minimum of 50%. In this connection, our attention was invited to the decision of the Apex Court in **Civil Appeal No. 5591 of 2006 titled as K. J. S. Buttar Vs. Union of India and Anr.** dated 31.3.2011.

3. The respondents have contested the petition by filing a reply. So far as the rounding up by the order dated 31.1.2001 and subsequent notification dated 19.1.2010 is concerned, it now transpires that a person who has retired prior to 1.1.1996 will be entitled to benefit of rounding up. In the above said judgment, their Lordships have already held that this artificial cap of 1.1.1996 cannot be sustained. Now, the Government of India himself has removed this cap. This decision of the Apex Court has been complied with. The petitioner will be entitled to benefit of rounding up from the date of removal of the cap i. e. 19.1.2010. The petitioner was discharged in 1992 and this benefit was introduced for the first time on 31.1.2001 and the cap has been removed on 19.1.2010. Therefore, the petitioner is now entitled to the benefit of rounding up. The petitioner filed this petition in 2011. Therefore, we allow this petition and direct the respondents to give the benefit of rounding up to the petitioner from the date the cap was removed i. e. 19.1.2010. He

shall also be entitled to arrears with interest @ 12% per annum and also to the benefit of rounding up at the rate of 50%.



A.K. MATHUR
(Chairperson)



S.S. DHILLON
(Member)

New Delhi
September 20, 2011
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