

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

21.

O.A. No. 291 of 2011

Col (Retd) I.S. Roperia

.....Petitioner

Versus

Union of India

.....Respondent

For petitioner: Mr. Bharat Bhushan for Mr. S.R. Kalkal, Advocate.

For respondents: Mr. J.S. Yadav for Mr. R. Balasubramanian, Advocate.

CORAM:

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

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

ORDER

08.11.2012

1. Petitioner by this petition has prayed that the Respondents may be directed to pay him 50% disability pension from the date of his discharge from Army alongwith 12% interest on the arrears.
2. Petitioner was commissioned in the Army on 17<sup>th</sup> December 1977 in the rank of 2<sup>nd</sup> Lieutenant after having been found physically and medically fit in all respects. He was posted at various places in peace, field, high altitude etc. While on active service, the Petitioner was suffering from health problems for which he was admitted and treated but could not be fully cured for the disease 'cervical and lumber spondylosis'. Therefore, he was placed in low medical category P-2 (Perm.) in 1998. Thereafter he proceeded on retirement on 31<sup>st</sup> May 2010 in low medical category P-2 (Perm) and the Release Medical Board assessed the disability as 20% each and composite 30% for life. It is also alleged that on recommendation of the 5<sup>th</sup> Pay Commission, the Government issued a notification dated 31<sup>st</sup> January 2001 and accepted the minimum disability pension in para 7.2 of the notification that the disability pension less than 50% would be considered and accordingly on this basis

learned counsel has filed this petition since Petitioner has suffered 30% disability therefore it should be rounded up to 50% as per the aforesaid notification.

3. A reply was filed by the Respondents and the Respondents have contested the position saying that the benefit of rounding up is not applicable to the Petitioner since he was not invalidated out of service. Thereafter we directed the Respondents to file an affidavit and the Government has filed the affidavit.

4. Be that as it may, the fact remains that this issue has already come before us in the case of **Ex. Sep Rambir Singh v. Union of India & Ors. (O.A. No. 292 of 2011 decided on 10<sup>th</sup> October 2012)**. We have already taken the view that in view of the two decisions given by the Hon'ble Supreme Court in the case of **P.K. Kapoor v. Union of India [2007 (9) SCC 425]** and in the case of **Union of India & Ors. V. N.K. Narikar (C.A. No. 8433-8434 of 2009)**, rounding up is only available to persons who are invalidated out of service. In the present case, the Petitioner has been released from service and not invalidated out of service. Therefore, he is not entitled to get the benefit of rounding up.

5. Consequently, the petition is dismissed with no order as to costs.

**A.K. MATHUR**  
(Chairperson)

**S.S. DHILLON**  
(Member)

New Delhi  
November 8, 2012  
dn/pd