

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL
BENCH AT CHANDIMANDIR**

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OA 1718 of 2012

Sareb Diyal	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Mr Ravi Badyal, Advocate
For the Respondent(s) :	Mr. Sandeep Bansal, CGC.

**Coram: Justice Prakash Krishna, Judicial Member.
Air Marshal (Retd) SC Mukul, Administrative Member.**

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**ORDER
13.03.2014**

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The present petition has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 claiming the following reliefs :-

- (a) Directing the respondents to grant the benefit of rounding of disability element from 30% to 50% in the rank of Hony. Lieutenant (Officer) lastly held by the applicant.
- (b) Directing the respondents to release the disability pension (disability element only) to the applicant from the date of discharge 31.10.2005 in the rank of the Hony Lieutenant which was amended from time to time by the Govt. of India in view of the recommendation of the Central Pay Commission alongwith interest @ 12% P.A.
- (c) Direction for granting any other relief which the applicant is found to be entitled to in law and equity may also be granted in his favour including cost.

The facts are few and are not much in dispute. The petitioner was enrolled in the Army on 5.10.1974 and was promoted to the rank of Subedar. While he was serving as Subedar, he suffered the disease of primary hypertension and was placed in the low medical category. Thereafter he was given the rank of Honorary Lieutenant on 15.8.2005 and reached the age of superannuation on 31.10.2005. At the time of

discharge, the petitioner was brought before Medical Board and he was placed in low medical category (Permanent) with 30% disability. The present petition has been filed for grant of benefit of rounding off disability pension and entitlement of officer's rank disability element.

In the written statement filed by the respondents, they have come up with the case that the petitioner is not entitled to get the advantage of rounding off. Only those persons who are discharged from service before completion of service tenure on medical ground in Low Medical category are considered deemed to be invalided out of military service and given benefits of rounding up of Disability Element on or after 1.1.1996. Reference has also been made to Regulation 180 of Pension Regulations for the Army, 1961(Part I). The further case is that the rank for the purpose of assessment of service element and disability element of disability pension, shall be the substantive rank or high paid acting rank, if any, held by the individual, on the date on which he sustained the wound or injury or was first removed from duty on account of a disease causing his disablement.

Heard learned counsel for the parties and perused the record.

We find that the controversy in hand is squarely covered by a decision of this Tribunal given in **OA No. 1349 of 2012 – Lakhbir Singh v Union of India and others** decided on 28.05.2013. In the case of Lakhbir Singh, the petitioner therein was conferred the rank of Honorary Sub Lieutenant on 15.08.2003, retired as such on 31.08.2003. He was granted service pension for the rank of Honorary Sub Lieutenant. However, he was granted the disability pension @ 40% disability for life for the rank of Master Chief Engine Room Artificer. On these facts, it

was held that the petitioner therein is entitled to disability element of disability pension in the rank held by him either at the time of suffering the disability or discharge/retirement. The claim for rounding off was also allowed. Relevant portion of the order dated 28.05.2013 is reproduced below:-

“Admittedly, the petitioner, who was conferred the rank of Honorary Sub Lieutenant on 15.08.2003, retired as such on 31.08.2003. It is clearly stated in the reply that the petitioner was granted service pension for the rank of Honorary Sub Lieutenant. However, he was granted the disability pension @ 40% disability for life for the rank of Master Chief Engine Room Artificer. This does not appeal to any logic as to why he has been granted disability pension for the rank of MCERA when he was allowed service pension for the higher rank of Honorary Sub Lieutenant. We find that this action of the respondents is arbitrary. The petitioner ought to have been granted disability pension for the rank held by him either at the time of his retirement. The entitlement to disability pension for rank of Honorary Sub Lieutenant is squarely covered by the provisions of Regulation 180 of pension Regulations which has been interpreted number of times by this Bench to the effect that the individual is entitled to disability element of disability pension in the rank held by him either at the time of suffering the disability or discharge/retirement. This matter is also covered by the decision of this Bench in OA No. 841 of 2011 (Raj Kishore Vs. Union of India) decided on 17.11.2011. As far as the relief of ‘rounding off’ is concerned, the controversy is covered by judgment of Hon’ble the Supreme Court dated 31.03.2011 passed in CA No. 5591 of 2006 “K.J.S. Buttar vs. Union of India and others”, read with judgment of this Tribunal dated 22.12.2011, passed in OA No. 1370 of 2011, Labh Singh vs. Union of India and others, and since the aspect about the period of service having not been cut-short is covered by recent judgment of this Tribunal, dated 03.08.2012, passed in bunch of cases led by OA No. 1960 of 2012 “Ved Parkash vs. Union of India and others”, accordingly, for the reasons given in KJS Buttar’s case read with Labh Singh’s case, so also read with Ved Parkash’s case, this petition is allowed and husband of the petitioner is held entitled to the benefit of ‘rounding off’.

In view of above, we find sufficient force in the petition and held that the petitioner is entitled to both the reliefs claimed in the petition, but the arrears are restricted for six months prior to the filing of the petition. The present petition was presented on 06.07.2012, therefore, the petitioner will get the benefit from 06.01.2012.

Necessary calculations and actual payment be made to the petitioner within a period of three months from the date of receipt of certified copy of this order by the respondents, failing which the amount shall carry interest @ 10% per annum.

In the result, petition succeeds and is allowed. No order as to costs.

(Justice Prakash Krishna)

(Air Marshal (Retd) SC Mukul)

13.03.2014

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Whether the judgment for reference to be put up on website – Yes/No