

Form No. 4  
{See rule 11(1)}  
ORDER SHEET  
ARMED FORCES TRIBUNAL, REGIONAL BENCH, SRINAGAR AT JAMMU  
E-Court (Sl. No. 21)

O.A. No. 261 of 2020

Bodh Raj  
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others  
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>17.01.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Lt. Gen. Ravendra Pal Singh, Member (A)</u></p> <p>1. Heard Shri S.K. Saini, Ld. Counsel for the applicant and Shri Vikas Sharma, Ld. Senior Central Government Standing Counsel for the respondents.</p> <p>2. The present Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has sought the following reliefs:-</p> <p style="padding-left: 40px;">"(a) The respondents may be directed to compute the 20% disability of the applicant as 50% for the purpose of grant of disability element from 01.02.2000 to for life along with 18% annual interest till payment may be made which has not been released will fully.</p> <p style="padding-left: 40px;">(b) Issue any other appropriate order or direction which this Hon'ble Bench may deem fit and proper under the circumstances of this application."</p> <p>3. The brief facts of the case are that the applicant was enrolled in the Indian Army on 31.01.1983 and was discharged from service on 31.01.2000 in Low Medical Category under Rule 13 (3) Item III (i) of the Army Rules, 1954 in the rank of Nk (TS) after rendering 17 years of service. The applicant was granted disability element for 20% with effect from 01.02.2000 for life. The applicant approached the respondents vide application dated 01.03.2020 for granting benefit of rounding off of disability element @ 50% from the date of discharge from service. The respondents agreed to round off the same from 01.01.2016 vide letter dated 24.03.2020 but did not grant the same from 01.02.2000. It is in this perspective that the applicant has preferred the present Original Application.</p> <p>4. Submission of learned Counsel for the applicant is that applicant was enrolled in the Indian Army on 31.01.1983 and was discharged from service on 31.01.2000 in Low Medical Category under Rule 13 (3) Item III (i) of the Army</p>

Rules, 1954 in the rank of Nk (TS) after rendering 17 years of service. The disability of the applicant was assessed @ 20% for life by the RMB. Since, the applicant retired in the rank of Naik (TS), he was liable to serve for a period of 22 years as per terms of engagement but his service tenure has been cut short and he was discharged from service after serving 17 years only. Thus, applicant's discharge from service be treated/deemed as a case of invalidation from service in view of the Hon'ble Apex Court judgment in the case of **Sukhwinder Singh vs Union of India & Ors**, reported in (2014) STPL (WEB) 468 SC. Accordingly, in terms of Govt. of India, Ministry of Defence letter dated 31.01.2001 which was made effective w.e.f. 01.01.1996, applicant is entitled to the benefit of rounding off from the date of invalidation from service, i.e. 01.02.2000. Hence, applicant should be granted benefit of disability element duly rounded off from 20% to 50% for life from the date of invalidation, i.e. 01.02.2000 and not from 01.01.2016 as conceded by the respondents.

5. On the other hand, Ld. Counsel for the respondents submitted that as the applicant was discharged from service in the rank of Nk (TS) after rendering 17 years of service and not invalidated out from service, he is eligible for grant of broad banding/rounding off benefit of disability element from 20% to 50% for life with effect from 01.01.2016 as per PCDA (Pension), Prayagraj Circular No. 596 dated 09.02.2018 and not from 01.02.2000 as claimed by the applicant.

6. We have heard learned counsel for the parties and perused the material placed on record.

7. Consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/ D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

8. In the instant case, there is no dispute that applicant is in receipt of 20% disability element for life as this fact has been accepted by both the parties during final hearing of the case. However, with regard to dispute whether applicant will be entitled to rounding off benefit from the date of discharge from service, i.e. 01.02.2000 treating a case of invalidation or from 01.01.2016 as per PCDA (P) Prayagraj Circular No. 596 dated 09.02.2018 treating a case of normal discharge.

9. In the present case, if applicant's case is deemed invalidation, then applicant will be entitled to the benefit of rounding off from 20% to 50% for life from the date of invaliding out from service, i.e. 01.02.2000 as per 31.01.2001

policy, However, due to law of limitations settled by the Hon'ble Supreme Court in the case of *Shiv Dass v. Union of India and others (2007 (3) SLR 445)*, the arrears of disability element will be restricted to three years preceding the date of filing of the instant O.A. and the date of filing of this O.A is 24.08.2020. Thus, applicant will be paid arrears of disability element w.e.f. 24.08.2017 but, if we give the benefit of rounding off from the date of discharge from service treating it a normal discharge, then as per PCDA (P), Allahabad Circular No. 596 dated 09.02.2018, arrears of rounding off benefit will be paid from 01.01.2016. Therefore, on comparison of both options/clauses, it will be beneficial/favourable to the applicant if he is granted benefit of rounding off of disability element @ 50% for life from 01.01.2016 as per PCDA (P) Circular No. 596 and not from 01.02.2000 by imposing law of limitation in granting arrears preceding three years from the date of filing of O.A.

10. In view of the above, the Original Application is disposed off. The applicant is entitled to the benefit of rounding off of disability element from 20% to 50% for life from the date of discharge as conceded/granted by the respondents as per PCDA (P), Allahabad Circular No. 596 dated 09.02.2018, granting arrears w.e.f. 01.01.2016. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of this order and issue PPO granting arrears from 01.01.2016 accordingly, if not already issued/granted.

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall stand disposed off.

(Lt. Gen. Ravendra Pal Singh)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

AKD/SB