Form No.4

[(SEE RULE 11(1)]

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No. O.A. No. 114/2017

APPLICANT (S)	SGT RAJEEV RANJAN SAHAY (RETD)
RESPONDENT (S)	UNION OF INDIA & ORS.
Legal Practitioner of applicant	Legal Practitioner for Respondent (s)
Mr. S. K. Choudhury	Mr. Indrajeet Dasgupta

ORDERS OF THE TRIBUNAL

Order Serial Number : 05 Dated : 27-10-2017

Coram : Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Lt Gen Gautam Moorthy, Member (A)

Present : Mr. S. K. Choudhury, learned advocate for the applicant. Mr. Indraejet Dasgupta, learned counsel for the respondents. Sqn Ldr Pathak, Departmental representative.

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, praying for grant of Broad Banding benefit to the applicant. The applicant was enrolled in the Indian Air Force on 10.07.1995. He retired on 31 Jul 2015 in low medical category. The applicant is getting 20 per cent disability element of pension for life by CDA(AF), Allahabad vide their PPO.

2. Since it is a case of "broad-banding" from 30% to 50% and the documents annexed to the instant application are not refuted by the respondents, we do not feel the necessity of even having a counter affidavit on record as it would unnecessarily delay the disposal of the instant matter, which is not in the interest of justice. Hence, We proceed to dispose of the case at the admission stage itself.

3. Heard learned counsel for the parties.

4. The learned counsel for the applicant referring to the PPO issued by the competent authority submits that since the applicant is receiving disability element of pension at the rate of 20%, he is entitled to the benefit of "broad-banding" the same to 50% in terms of the order passed by the Hon'ble Supreme Court on 10.12.2014 in Civil Appeal No. 418 of 2012 (**Union of India &Ors. vs. Ram Avatar**). The learned counsel, therefore, submits that a direction needs to be issued to the respondents to grant benefit of broad banding of the disability element of pension from 50% to 75% with arrears and interest thereon.

5. The learned counsel appearing for the respondents, on the other hand, referring to the policy decision of Govt. of India dated 31.01.2001, has submitted that since the applicant has not been invalidated out from service, he is not entitled to the benefit of "broad-banding". The learned counsel has further submitted that the said policy decision relates to grant of "broad-band" benefit to the persons who have been invalidated out from service.

6. We have considered the submissions advanced by the learned counsel for the parties.

7. It is not in dispute that the applicant was enrolled in Air Force service and prematurely retired in low medical category on 31.07.2015 and he has been receiving the disability element of pension at the rate of 30% for life with effect from the date of his superannuation, as it is evident from the PPO issued by the competent authority. The issue relating to the grant of rounding off benefit of the disability element of pension is no longer res-integra in view of the order passed by the Hon'ble Supreme Court in Ram Avatar (supra), whereby the Hon'ble Supreme Court has directed the respondents to grant the said benefit to the personnel who have not only been invalidated out from service but to other

categories also.

8. That being the position, we are of the considered opinion that the applicant is entitled to the benefit of broad banding of the disability element of pension.

9. In view of the above, respondents are directed to pay the benefit of broad banding of the disability element of the pension of the applicant at the rate of 50%. Insofar as the arrears is concerned the Hon'ble Supreme Court in Civil Appeal No. 9946/2016 arising out of Special Leave to Appeal (C) No. 3353/2012 (**Davinder Singh Vs. Union of India & Ors.**) granted the leave and ordered :-

> *"..... From a reading of the order passed by the Tribunal in Jai Singh's case supra, it is evident that the Tribunal had while allowing the batch of petitions held the appellants therein, who were retirees prior to 01.01.1996, to the benefit of rounding off of disability pension as per letter dated 31.01.2001. The benefit was given w.e.f. 01.01.1996. Arrears w.e.f. 01.01.1996 with interest @ 8% p.a. were also allowed. It is argued by learned counsel of the appellant that the arrears w.e.f. 01.01.1996 having been allowed by the High Court in the relied upon judgement with interest @ 8% p.a., there was no reason for rounding the said period to three years only immediately prior to the filing of the petition in the case of the appellant. It is submitted that this court having already affirmed the view taken in Jaisingh's case, similar relief could be granted to the appellant also. We find merit in that submission.*
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> *.....That being so and the order passed by the Tribunal in Jaisingh's case and batch of cases having been affirmed by this court, we see no distinction between the cases dealt with by the Tribunal in that batch and the appellant's case to warrant a differential treatment to him in the matter of grant of arrears. We accordingly allow this appeal and modify the order passed by the Tribunal to the extent that the appellant shall also on the analogy of the order passed by the tribunal in Jai Singh's case (supra) be entitled to*

arrears payable to him by reason of rounding off of disability pension w.e.f. 01.01.1996 with interest @ 8% p.a. subject to adjustment of any amount already received by him for the said period."

10. The respondents are further directed to make payment of the arrears w.e.f. 31.07.2015 that is the date of retirement within four months from today, in default thereof, the arrears shall carry interest @ 8 per cent per annum till the date of actual payment is made.

11. The OA is allowed accordingly. No costs.

12. Learned counsel appearing for the respondents has made an oral prayer to grant leave to appeal to Hon'ble Supreme Court U/Section 31 of the AFT Act, 2007. Since the order does not involve any question of law having general public importance, the prayer for leave to appeal to the Hon'ble Supreme Court stands rejected.

13. Let a plain copy of this order, duly countersigned by the Tribunal Officer, be given to the parties after observance of requisite formalities.

(Lt Gen Gautam Moorthy)
Member(Administrative)

(Justice S.V.S. Rathore)
Member (Judicial)

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