

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP (C) No. 568/2024

UOI and Ors.

.....Applicant(s)/Petitioner(s)

Through :- Mr. Vishal Sharma, DSGI with
Mr. Eishaan Dadhichi, Advocate

v/s

Naik Gurbachan Singh

.....Respondent(s)

Through :- Mr. Amit Singh, Advocate
Mr. B.S. Sarmal, Advocate

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

ORDER (ORAL)
30.09.2025

Sanjeev Kumar J

1. Impugned in this petition, filed by the Union of India under Article 226 of the Constitution of India, is an order and judgment dated 18.08.2022 passed by the Armed Forces Tribunal, Srinagar Bench at Jammu ["the Tribunal"] in OA No. 701/2019 titled Ex. Naik Gurbachan Singh vs. Union of India and others and order dated 10.11.2023 passed in RA No. 23/2022 titled Ex. Naik Gurbachan Singh vs. Union of India and others, whereby the Tribunal has reviewed its order dated 18.08.2022 passed in OA No. 701/2019 and directed the petitioners herein to pay the arrears for the entire period by reviewing the restriction of three years with interest @8% per annum, on the date of hearing.

2. Before we advert to the grounds of challenge urged by Mr. Vishal Sharma, learned DSGI appearing for the petitioners, we deem it appropriate to take note of few relevant facts.

- i. The respondent was enrolled in the Indian Army on 01.07.1971 and was discharged on 30.06.1986 on completion of term of his engagement. At the time of his discharge, he was in the rank of Naik.
- ii. At the time of his discharge, the respondent was granted both the service element as well as the disability element of pension assessed at 20% attributable and aggravated by the Army Service.
- iii. He approached the petitioners in the year 2016 seeking rounding-off of his disability to 50% which was declined by the petitioners on the ground that he stood discharged from service on completion of his tenure.

3. Feeling aggrieved, respondent filed OA No. 701 of 2019 before the Tribunal seeking *inter alia* a direction to the respondents to round-off his disability from 20% to 50% for the purpose of grant of disability element of pension with effect from 01.01.1996 for life along with interest @18% per annum. It was the case of the petitioners before the Tribunal that in view of the Circular dated 05.09.2017 issued by the Department of Ex-Servicemen Welfare, Ministry of Defence,

Government of India, New Delhi, the benefit of round-off was available to the respondent with effect from 01.01.2016 and not from 01.01.1996 as claimed.

4. The matter was considered by the Tribunal in the light of rival contentions and the material on record. The Tribunal was of the opinion that in view of the judgment rendered in the case of Ram Avtar vs. Union of India and Others (Civil Appeal No. 418/2012)” decided on 10.12.2014, the respondent having retired before 01.01.1996 was entitled to the benefit of rounding-off envisaged in the circular of 2001, notwithstanding that he had retired on completion of his term. The OA was, therefore, allowed by the Tribunal and the arrears were restricted to three years preceding the institution of the OA, i.e., 06.12.2019.
5. The respondent was aggrieved of the order dated 18.08.2022 to the extent it restricted the arrears only to the period of three years preceding the institution of OA and, therefore, approached the Tribunal once again by way of his review petition which was registered as RA No. 23/2022. The review petition came to be disposed of by the Tribunal vide order dated 10.11.2022 removing the restriction of payment of arrears for a period of three years preceding the filing of the OA. It is this order which is called in question by the petitioners in this petition.
6. The impugned order is challenged by the petitioners on the following grounds: -

- a. That the order impugned passed by the Tribunal sans any reason and is, therefore, not sustainable in law, in that, the Tribunal has not even indicated as to what was the error apparent on the face of record which necessitated the review of the earlier order.
- b. That the Tribunal has not appreciated that the arrears were restricted to three years preceding the filing of the OA, for the reason that there was inordinate delay on the part of the respondent to agitate his grievance before the authorities as well as the Court of law.

7. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the order impugned passed in the review petition is not only non-speaking, but is also contrary to and not in consonance with law governing the review jurisdiction of the Court. Without indicating as to what was the error apparent on the face of record in the order dated 18.08.2022 passed in OA No. 701/2019, the Tribunal could not have accepted the review petition and reviewed its earlier order dated 18.08.2022. The Tribunal, however, also modified the order without even affording adequate opportunity to the petitioners in this regard. Otherwise also on merits, we find that in view of the circular of the Government of India dated 05.09.2017 (supra), the benefit of rounding-off was available to the respondent with effect from 01.01.2016. It is seen that in the OA filed before the Tribunal, the respondent had not thrown challenge to the

circular of the Ministry of Defence, Government of India dated 15.09.2017 which unequivocally provides that the benefit of rounding-off to those who have retired prior to 01.01.2016 shall be available only with effect from 01.01.2016.

8. That apart, the cause of action to approach the Court accrued to the petitioners on 31.01.2001 when the Government of India in the Ministry of Defence issued a circular providing for the benefit of rounding-off of the disability for the purpose of grant of disability element of pension in favour of only such retirees invalidating or dying in harness on or after 01.01.1996. The respondent had obviously retired before 01.01.1996 and was thus deprived of the benefit of rounding-off by the circular dated 31.01.2001. This was the time when the respondent should have agitated the matter either before the authorities or before the competent Court of law.
9. It is not in dispute that several similarly situated persons, who were deprived of the benefit of rounding-off by the circular dated 31.01.2001 by fixing the cut-off date by 01.01.1996 had approached the AFT and contested the matter there. The respondent remained a fence-sitter and decided to agitate the matter when the litigation which was launched by the similarly situated aggrieved Army personnels came to be finalized with the delivery of judgment by the Hon'ble Supreme Court in the case of Ram Avtar (supra) on 10.12.2014. The judgment aforesaid and also the judgment passed in "**K.J.S. Buttar vs. Union of India and Another**" (2011) 11 SCC 429 came to be implemented by the Government of India by issuing a circular dated

05.09.2017. It is only after the entire issue was set at rest at the behest of other Army personnels, the respondent who was a fence-sitter, also came forward and filed OA No. 701/2019 in the year 2019. We are, therefore, in agreement with the learned counsel for the petitioners that there was a remissness and inordinate delay on the part of the respondent in approaching the Court. He kept quiet right from the year 2001 till the year 2019 when he filed the OA to seek the benefit of the judgments rendered in the cases of KJS Buttar and Ram Avtar (supra).

10. Keeping in view the settled legal position, the Tribunal had in its order and judgment dated 18.08.2022 restricted the arrears to a period of three years preceding the institution of OA, i.e., 06.12.2019 and, therefore, there was no occasion for the Tribunal to review the said judgment so as to lift the embargo of payment of arrears to three years.
11. For the foregoing reasons we find merit in this petition and the order impugned dated 10.11.2023 passed in Review Application no. 23/2022 is set aside. We, however, provide that in terms of circular dated 05.09.2017, the respondent shall be entitled to the benefit of rounding-off of his disability pension with effect from 01.01.2016.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
30.09.2025
Manik

Whether the order is speaking: Yes

Whether the order is reportable: Yes