

2024:PHHC:114620-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21412-2024 (O&M)
Date of Decision: 30.08.2024

UNION OF INDIA AND OTHERS

...Petitioners

Versus

NO 4457850 EX NAIK AVTAR SINGH AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Ms. Ruchi Sekhri, Sr. Panel Counsel,
for Union of India.

SUDHIR SINGH, J.

The petitioners have filed the present writ petition for issuance of a writ in the nature of Certiorari quashing the impugned order dated 10.10.2018, passed by the learned Armed Forces Tribunal, Chandigarh Bench, Chandimandir (for short 'the AFT'), whereby the Original Application filed by respondent No.1, has been disposed of by holding respondent No.1 entitled to the benefit of rounding off by computing his disability to the extent of 50% as against 40% w.e.f. 01.04.1996 to 19.09.1997 and thereafter, to the extent of 50% as against 30% w.e.f. 20.09.1997 for life, in terms of judgment of the

Hon'ble Supreme Court in Civil Appeal No.418 of 2012 Union of India and others vs. Ram Avtar, decided on 10.12.2014.

2. Learned counsel appearing for the petitioners submits that the only challenge in the present writ petition is to grant of arrears of the rounding off benefit beyond three years. It is further contended that in terms of the Judgment of Hon'ble Supreme Court in Shiv Dass Vs. Union of India, (2007)9 SCC 274, the benefit of arrears accruing to respondent No.1 on account of grant of rounding off benefit, should be restricted to three years prior to the filing of the Original Application filed by respondent No.1.

3. On the other hand, Major Navdeep Singh, Advocate, who is present in Court on the service of advance notice, on behalf of respondent No.1, submits that the judgment of Shiv Dass case (supra), is only applicable to the cases of disability pension, where a member approaches the learned AFT after a delay for grant of such pension. However, in case of rounding off, the period of three years restriction will not be applicable as the member has already been in receipt of the disability pension and the rounding off would only mean the increase in such pension.

4. We have heard learned counsel for the parties and have also gone through the paper book, including the impugned order passed by the learned AFT.

5. It may be noticed that against an identical order dated 10.08.2018 passed in Original Application No.3106 of 2018 by learned AFT, the Union of India had filed Civil Appeal No.10713 of 2021 – Union of India Vs. Piyush Bahuguna. The said appeal was

dismissed by the Hon'ble Supreme Court by passing the following order:-

“Leave to appeal under Section 31(1) of the Armed Forces Tribunal Act, 2007 is granted.

Delay condoned.

We are not inclined to interfere with the impugned order and hence, the appeal is dismissed.

We must observe and express our displeasure at the manner in which the appellants have been filing appeals against grant of disability pensions, even where the legal issue is settled.

Pending application(s), if any, stand disposed of.”

6. The Hon'ble Supreme Court in Union of India and others vs. Ram Avtar, 2014 SCC OnLine SC 1761, while considering the issue of grant of rounding off of disability pension, has held as under:-

“4. By the present set of appeals the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding-off of disability pension. The appellant(s) herein would contend that, on the basis of Circular No. 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an Armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. We have heard learned counsel for the parties to the lis.

6. We do not see any error in the impugned judgment(s) and order(s) and therefore all the appeals which pertain to the concept of rounding-off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to the pensioners before them, if any, who are getting or are entitled to the disability pension.”

7. Still further a reference may also be made to a Three Judge Bench of the order of the Hon’ble Supreme Court in Devinder Singh Vs. Union of India and Others Civil Appeal No.9946-2016 decided on 20.09.2016. In the said case, the order passed by the learned AFT restricting the arrears of rounding off to three years prior to the filing of the application, was set aside by the Hon’ble Supreme Court and the applicant/appellant therein was held entitled to the arrears of rounding off the disability pension w.e.f. 01.01.1996. The relevant extracts from the said order of the Hon’ble Apex Court, would read as under:-

“.....There was no reason for reducing 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. From a perusal of the order passed in Jaisingh’s case, it appears that while most of the cases disposed off in the said batch were transferred cases where writ petitioners had been filed earlier than 2010, there were half a dozen fresh cases that were filed in the year 2010 and later. The Tribunal had notwithstanding the delay in the filing of the O.As granted redress to the petitioners in the said batch of cases w.e.f. 01.01.1996 with interest @ 8% p.a. 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 Jaisingh’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...”

8. Indisputably, the legal issue stands settled. As has been noticed above, the restriction of the payment of arrears to three years prior to the filing of the application is not applicable to the cases of rounding off as held by the Hon’ble Supreme Court in Devinder Singh case (supra).

9. In view of the above, we do not find any merit in the present writ petition, the same is hereby dismissed.

[SUDHIR SINGH]
JUDGE

[KARAMJIT SINGH]
JUDGE

30.08.2024
Himanshu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No