

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1

O.A. No. 513 of 2021 with M.A. No. 533 of 2021

Col. Arun Kumar (Retd.)
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>08.09.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Memo of Appearance filed by Shri Alok Kumar Mishra, Advocate on behalf of the respondents is taken on record.</p> <p style="text-align: center;">Hedard Shri S.G. Singh, Ld. Counsel for the applicant and Shri Alok Kumar Mishra, Ld. Counsel for the respondents.</p> <p style="text-align: center;">The instant Original Application has been filed by the for grant of disability. There is no delay in filing of Original Application.</p> <p style="text-align: center;">It is a fit case for adjudication.</p> <p style="text-align: center;">Admit.</p> <p style="text-align: center;">Ld. Counsel for the respondents seeks and is allowed four weeks time to file Counter Affidavit. Rejoinder Affidavit, if any, may be filed within two weeks thereafter.</p> <p style="text-align: center;">List the matter before Registrar on 10.11.2021 for exchange of pleadings.</p> <p style="text-align: center;">List the matter before Tribunal on 24.11.2021.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>AKD/-</p>

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1

O.A. No. 288 of 2021

Ex. Sep. Nand Kishore Sharma
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>08.09.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Heard Shri Shri V.P. Pandey and Shri R.K. Singh, Ld. Counsel for the applicant and Shri Devesh Kumar, Ld. Counsel for the respondents.</p> <p>2. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-</p> <p style="padding-left: 40px;">“(a) To issue/pass an order or direction to the Respondents to grant the applicant benefit of “rounding off” of the disability pension from 60% for life from 01.02.1985 to 31.12.1995 and rounded off to 75% from 01.01.1996 for life.</p> <p style="padding-left: 40px;">(b) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.</p> <p style="padding-left: 40px;">(c) Cost of the O.A. be awarded to the applicant.”</p> <p>3. Briefly stated facts of the case are that the applicant was enrolled in Indian Army on 15.01.1972 and was discharged from service on 31.01.1985 (AN) in low medical category on completion of normal terms of engagement. The Release Medical Board identified his disability “COMPLETE TEAR OF MEDIAL COLLATERAL LIGAMENT WITH PARTIAL TEAR OF ANTERIOR CRUCIATE LIGAMENT LEFT KNEE” and assessed each @ 30% for two years. Accordingly, P.P.O. was issued by the Principal Controller of Defence Account (Pension), Allahabad. Thereafter, Re-Survey Medical Board (RSMB) was held on 22.08.1986 wherein the disability has been assessed @60% for life with effect from 15.10.1986. Accordingly, P.P.O. was issued by the Principal Controller of Defence Account (Pension), Allahabad. Presently the applicant is in receipt of 60% disability pension for life and has moved this Original Application for grant of benefit of rounding off of disability pension from 60% to 75% for life.</p>

4. Ld. Counsel for the applicant argued that since the applicant is already in receipt of 60% disability pension for life, therefore, in view of the Hon'ble Apex Court judgment in the case of **Union of India and Ors vs Ram Avtar & ors** (Civil appeal No. 418 of 2012 decided on 10th December 2014), the applicant is also entitled to benefit of rounding off of disability element @ 75% for life.

5. On the other hand, though Ld. Counsel for the respondents conceded receipt of 60% disability pension by the applicant but contended that the applicant is not entitled to the benefit of rounding off of disability pension on the ground that the applicant's services were not cut short as he was not invalidated out on account of his disability. In the instant case the applicant was discharged from service on completion of his terms of engagement, therefore, the Ld. Counsel claimed that applicant is not eligible for the benefit of rounding off.

6. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of the Hon'ble Supreme Court judgment in the case of **Union of India and Ors vs Ram Avtar & ors** (Civil appeal No 418 of 2012 decided on 10th December 2014) wherein the Hon'ble Apex Court has nodded in disapproval of the policy of the Government of India in granting the benefit of rounding off of disability pension only to the personnel who have been invalidated out of service and denying the same to the personnel who have retired on attaining the age of superannuation or on completion of their tenure of engagement. The relevant portion of the decision is excerpted below:-

“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.

8. This Court grants six weeks' time from today to the appellant(s) to comply with the orders and directions passed by us.”

7. In the instant case, there is no dispute that applicant is in receipt of 60% disability pension for life as this fact has been accepted by the respondents. In view of the settled law on this matter, we are of the considered opinion that the applicant is entitled to the benefit of rounding off to 75% for life with effect from

01.01.1996 as the policy for rounding off is applicable with effect from 01.01.1996, however, arrears shall be restricted to three years only from the date Original Application is filed.

8. In view of the above, the Original Application No. 288 of 2021 is allowed. The applicant is held entitled to the benefit of rounding off of disability pension from 60% for life to 75% for life with effect from three years prior to the date of filing of Original Application. The date of filing of Original Application is 02.06.2021. The respondents are directed to give effect to this order within a period of four months from the date applicant submits mandatory documents alongwith certified copy of this order. Defaults will invite interest @ 9% per annum from the due date till actual payment.

9. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

AKD/-

