

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

O.A. No. 373 of 2021

Ex. Nk. (TS) Sunil Kumar
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>11.02.2022</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 Om Prakash Kushwaha, Ld. Counsel for the applicant and Shri R.C. Shukla, 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. <i>To issue /pass an order / directions to the respondents to grant him benefits of rounding / broad banding of disability element of disability pension from @20% to 50% along with arrear, and interest @ 18% p.a. on arrear from the date of discharge w.e.f 31.01.2001 in the light of judgement and order of Hon'ble Apex Court, and Hon'ble AFT (RB) Lucknow, and the Govt of India Policy letter dated 31.01.2001.</i></p> <p style="padding-left: 40px;">B. <i>To issue / pass any other or direction as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case in favour of the applicant.</i></p> <p style="padding-left: 40px;">C. <i>To allow this original application with costs.</i></p> <p>3. Briefly stated facts of the case are that the applicant was enrolled in Indian Army on 17.01.1984 and was discharged from service on 31.01.2001 (AN) in low medical category on completion of terms of engagement under Rule 13 (3) Item III (i) of the Army Rules, 1954. The Release Medical Board held at 92 Base Hospital identified his disability "BLUNT INJURY RIGHT EYE" and assessed it @ 30% for five years, attributable to military service. Accordingly, P.P.O. was issued by the Principal Controller of Defence Account (Pension), Allahabad. Thereafter, Re-Survey Medical Board (RSMB) was held at Military Hospital, Agra on 19.04.2005 wherein the disability has been assessed @30% for life. Accordingly, P.P.O. was issued by the Principal Controller of Defence Account (Pension), Allahabad. Presently the applicant is</p>

in receipt of 30% disability element of disability pension for life and has moved this Original Application for grant of benefit of rounding off of disability pension from 30% to 50% for life.

4. Ld. Counsel for the applicant argued that since the applicant is already in receipt of 30% disability element 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 @ 50% for life.

5. On the other hand, though Ld. Counsel for the respondents conceded receipt of 30% 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 he 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 noded 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 30% disability element 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 50% for life with effect from **next date of his discharge**, 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. 373 of 2021** is allowed. The applicant is held entitled to the benefit of rounding off of disability element from 30% for life to 50% for life with effect from three years prior to the date of filing of Original Application. The date of filing of Original Application is 12.07.2021. 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/-

