

**Court No. 1 (E-Court)****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 45 of 2020**

Thursday, this the 26<sup>th</sup> day of August, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

770905-N Sgt. Rajeev Kumar (Retd.), S/o Shri Sita Ram Shahi,  
R/o H. No. 130, Kailash Vihar, PO – Jajmau, District – Kanpur  
(UP)-208010.

..... Applicant

Ld. Counsel for the Applicant : **Shri Shailendra Kumar Singh**, Advocate.  
and **Shri Ravi Kumar Yadav**, Advocate

Versus

1. Union of India, through Secretary, MoD (IAF), South Block, New Delhi-110066.
2. Chief of Air Staff, Air Hqrs, Vayu Bhawan, New Delhi-110011.
3. Director III A (DP), DAV, Air Hqrs, Subroto Park, New Delhi-110010.
4. SAO (AF), O/O the Jt. C.D.A. (AF), Subroto Park, New Delhi-110010.
5. PCDA (P) (Air Force), Draupadhi Ghat, Allahabad (UP)-212114.

.....**Respondents**

Ld. Counsel for the Respondents. : **Dr. Gyan Singh**, Advocate  
Central Govt. Counsel

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- A. *to quash and set aside the Respondent No. 3 letter Air HQ 99798/1/774905/05/18DAV (DP/RMB) dated 09 Oct 2018 (Annexure A-1 of instant OA & Impugned Order) wherein applicant was rejected for grant of disability element.*
- B. *to issue/pass an order or directions of appropriate nature to the respondents to grant disability element to the applicant from the date of his retirement from service (01.06.2018) and to pay the arrears along with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.*
- C. *to grant the benefit of rounding off of the disability pension from 30% to 50% in terms of Govt of India letter dated 31 Jan 2001 with effect from 01.06.2018 and to pay the arrears along with suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.*
- D. *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 07.05.1998 and was discharged on 31.05.2018 in Low Medical Category on fulfilling the conditions of his enrolment. At the time of discharge from service, the Release Medical Board (RMB) held at

SMC, 46 Wing Air Force on 17.07.2017 assessed his disability **'CSOM (LEFT) OPERATED (OLD) Z09.0' @ 30% for life or @15-19%** for life and opined the disability to be **Attributable to service**. The applicant's claim for grant of disability pension was rejected vide letter dated 09.10.2018 stating that applicant is not entitled to disability element in terms of Regulation 153 of Pension Regulations for the Indian Air Force, 1961 Part-I since the disability as recorded in RMB Proceedings has been assessed at less than 20% (15-19%). It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that the RMB has opined the disability to be Attributable to service. The RMB proceedings received by the applicant had two pages of Page No.5. On one page (Page 5) applicant's disability was assessed as 30% for life whereas on Second page (page – 5) was endorsed at 15-19 disability with an authentication by Flt. Lt. Enakal Sri Hari. Flt. Lt. Enakal Sri Hari was not the member of Release Medical Board held on 17.07.2017 as he was posted in to 46 Wing Air Force with effect from 09.09.2017. He pleaded that the applicant be granted disability element of pension and its rounding off to 50% as well as arrears thereof.

4. On the other hand, Ld. Counsel for the respondents contended that disability of the applicant @ 15-19% for life has been regarded as Attributable to Air Force Service by the RMB but

the disability being less than 20% applicant is not entitled to disability element of pension. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered are of two folds:-

- (a) Whether any manipulation has been carried out at page Nos. 5 and 6 of the Release Medical Board proceedings and if yes, what percentage of disability is to be treated correct?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. The respondents have produced original RMB proceedings before the Bench for perusal. On bare perusal of RMB we find that in the RMB two Board Members i.e. Flt. Lt. Shubham Mishra (Medical Officer, 46 Wing, AF) and Sqn. Ldr. A.S. Arun Kumar (Senior Medical Officer) have signed from Page Nos. 1 to 12 wherein at page No. 5 disability assessed @30% for life. We also find two additional Pages i.e. Page Nos. 5 and 6 on which Flt. Enakal Sri Hari [Medical Officer (Av. Med., 46 Wing, AF)] and Sqn. Ldr. A.S. Arun Kumar (Senior Medical Officer, 46 Wing AF) have

signed wherein on Page 5 disability assessed @15-19% for life and also bearing page 6 approved by Approving Authority. If Flt. Enakal Sri Hari [Medical Officer (Av. Med., 46 Wing, AF)] was Member of RMB he ought to have been signed each pages of RMB proceedings which he had not done. It shows that Flt. Enakal Sri Hari [Medical Officer (Av. Med., 46 Wing, AF)] was not a RMB Member and if he was not RMB Member then in which capacity he has signed additional Page Nos. 5 and 6 is matter of probe.

7. In view of above, we are of the considered opinion that putting of additional Page Nos. 5 and 6 in the RMB proceedings are the manipulations by assessing applicant's disability @15-19% for life was for depriving the applicant from getting disability element which is incorrect. Since RMB Members i.e. Flt. Lt. Shubham Mishra (Medical Officer, 46 Wing, AF) and Sqn. Ldr. A.S. Arun Kumar (Senior Medical Officer) have signed all the pages from Page Nos. 1 to 12 wherein at page No. 5 disability assessed @30% for life, we held applicant's disability @30% for life. With regard to attributability, the RMB has already been opined that the applicant's disability is Attributable to Air Force Service.

8. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of 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 10<sup>th</sup> December 2014). In this Judgment the Hon'ble Apex Court 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.”*

9. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & ors (supra)***, we are of the considered view that benefit of rounding off of disability pension @ 30% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

10. In view of the above, the Original Application No. 45 of 2020 deserves to be allowed, hence **allowed**. The impugned order dated 09.10.2018, annexed as Annexure No. A-1 with Original Application, is set aside. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life from the next date of his discharge.

11. The respondents are further directed to hold a Court of Inquiry to investigate the situation under which manipulations was carried out at additional page Nos. 5 and 6 of Release Medical Board proceedings and take appropriate action against the erring person.

12. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a

certified copy of this order. Default will invite interest @ 8% per annum till the actual payment

13. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 26 August, 2021

AKD/-