

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 227 of 2022**Wednesday, this the 10th day of August, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**No. 3194823N Ex. Sep. Lalit Kumar Son of Shri Kumar Pal Singh,
R/o Village : Jaidpura, Post : Jaidpura, District : Aligarh-202165
(UP).**..... Applicant**Ld. Counsel for the : **Shri R. Chandra**, Advocate
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ Post Office, New Delhi-110011.
3. Officer-in-Charge, Records The JAT Regiment, PIN-900469, C/o 56 APO.
4. The CDA (Pension), Draupadi Ghat, Allahabad-14 (UP).

.....RespondentsLd. Counsel for the : **Dr. Chet Narayan Singh**, Advocate
Respondents. 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 :-

- (I) *The Hon'ble Tribunal may be pleased to grant disability pension w.e.f. 12.09.2010 for life with the interest at the rate of 18% per annum.*
- (II) *Hon'ble Tribunal may be pleased further to grant benefit of rounding of disability pension in terms of Ram Avtar's Case and policy letter dated 31.01.2001.*
- (III) *Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the JAT Regiment of Indian Army on 28.10.2000 and was discharged on 11.09.2010 being undesirable soldier on disciplinary grounds under Rule 13 (3) Item III (V) of the Army Rules, 1954 in Low Medical Category. At the time of discharge from service, the Release Medical Board (RMB) held at 162 Military Hospital on 28.08.2010 assessed his disabilities (i) '**EXERCISE INDUCED BRONCHIAL ASTHMA**' @30% for life and (ii) '**PRIMARY HYPERTENSION**' @30% for life, **composite disabilities @50% for life** and opined the disabilities to be **aggravated** by service. The applicant's claim for grant of disability pension was not processed by the respondents on the grounds that applicant was discharged being undesirable soldier. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents

that he was suffering from any disease at the time of enrolment in Army. Since, the diseases of the applicant have been regarded as **aggravated by service**, the applicant is entitled for disability pension. He relied upon the law laid down by the Hon'ble Apex Court in the case of ***Union of India & Others Versus V.R. Nanukuttan Nair***, Civil Appeal Nos. 4714-4715 of 2012, decided on 07.11.2019. He further pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off to 75%.

4. On the other hand, Ld. Counsel for the respondents contended that although composite disabilities of the applicant @50% for life have been regarded as **aggravated** by the RMB but since the applicant has been discharged from service being undesirable soldier on disciplinary grounds, hence applicant is not entitled to disability 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 question which needs to be answered is whether the applicant is entitled for the disability pension or disability element of pension and its rounding off.

6. Regulation 173 of Pension Regulations for the Army, 1961 (Part – I) provides primary conditions for the grant of disability pension which reads as under :-

“173. Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an individual who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed 20 percent or over.

The question whether a disability is attributable to or aggravated by military service shall be determined under the rule in Appendix II.”

7. It is undisputed that the applicant was discharged from service being undesirable soldier on disciplinary grounds and not on account of disabilities he had at the time discharge. We are of the considered opinion that since the applicant was discharged from service on disciplinary grounds and not on account of his disabilities, he is not entitled for service element of disability pension.

8. Further, since the disabilities of the applicant have been regarded as **aggravated by service by the RMB**, the applicant is entitled for disability element of disability pension @50% for life.

9. In the case of ***Union of India & Others Versus V.R. Nanukuttan Nair (Supra)*** the applicant (V.R. Nanukuttan Nair) was discharged on completion of terms of engagement on account

in low medical category on account of his disability as such he was granted disability pension which includes service element as well as disability element, whereas in the present case the applicant has not been discharged on account of his disabilities rather he has been discharged being undesirable soldier on disciplinary grounds. As such the law laid down by the Hon'ble Apex Court in the case of ***Union of India & Others Versus V.R. Nanukuttan Nair (Supra)*** is not applicable in the present case.

10. 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 10th 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 invalided 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."*

11. Additionally, consequent upon the issue of Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, Principal Controller of Defence Accounts (Pensions), Prayagraj has issued Circular No. 596 dated 09.02.2018 wherein it is provided that the cases where Armed Forces Pensioners who were retired/discharged voluntary or otherwise with disability and they were in receipt of Disability/War Injury Element as on 31.12.2015, their extent of disability/War Injury Element shall be re-computed in the manner given in the said Circular which is applicable with effect from 01.01.2016.

12. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

13. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @ 50% for life to be rounded off to 75% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

14. In view of the above, the **Original Application No. 227 of 2022** deserves to be partly allowed, hence **partly allowed**. The applicant is entitled to get disability element @50% for life which would be rounded off to 75% for life w.e.f. three years preceding

the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @50% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 21.03.2022. 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.

15. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 10 August, 2022

AKD/-