

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 176 of 2019**Wednesday, this the 2<sup>nd</sup> day of December 2020**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Uday Bir Singh, No. 6886526, Ex Sepoy ,  
R/O Village – Nagla Garh, P.O.- Kharsulia, Tehsil: Aliganj,  
District – Etah, (U.P.) - 207001

.....Applicant

Ld. Counsel for :  
Applicant**Shri Vijay Kumar Pandey**  
**Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi.
2. Addl Dte Gen Pers Services – 4 (Imp-II), Adjutant general's Branch, Integrated HQ of MoD (Army), Kashmir House, DHQ Post, New Delhi.
3. OIC Records, Record AOC, PIN – 900453, C/o 56 APO.
4. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad (U.P.).

.....Respondents

Ld. Counsel for the :  
Respondents**Shri Ashish Kumar Singh,**  
Central Govt Counsel

## ORDER

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

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

*(i) That this Hon’ble Tribunal may kindly be pleased to quash the impugned rejection order dated 03.11.2016, passed by the opposite party no. 3, as contained in annexure no. 1 to this original application, and direct the opposite parties to pay the disability pension for life to the applicant w.e.f. 13.10.1980, to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a. since due date to actual date of payment.*

*(ii). This this Hon’ble Tribunal may kindly be awarded the cost Rs. 20,20,000/- (RUPEES TWENTY LAC AND TWENTY THOUSAND ONLY) to the applicant against the opposite parties.*

*(iii) That this Hon’ble Tribunal may be pleased to pass any other order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.*

2. The undisputed factual matrix on record is that the applicant was enrolled in the Indian Army on 27.06.1962 and was invalided out from service on medical ground with effect from 11.10.1968 under Rule 13 (3) III (iii) of Army Rules, 1954 in Medical Category ‘E’ (EEE) for the disease “**Hysterical Reaction 300 (d) V-67**”. The applicant was granted disability pension from 20.09.1970 to 12.10.1980. Resurvey Medical

Board of the applicant held on 23.02.1985 at Military Hospital, Agra, assessed disability less than 20% and considered it as neither attributable to nor aggravated by military service. Claim for grant of disability pension was rejected by PCDA (P), Allahabad vide their letter dated 30.07.1985 on the ground of disability being less than 20% and his first appeal was also rejected by the respondents vide letter dated 03.11.2016. PPO for grant of service element has been issued and applicant is in receipt of service element of pension. Being aggrieved by denial of disability pension, the applicant has approached this Tribunal by means of present O.A.

3. Ld. Counsel for the applicant submitted that since the applicant was suffering from disability “**Hysterical Reaction 300 (d) V-67**” while performing military duty, therefore, applicant is entitled to disability pension. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant is also entitled to disability pension and its rounding off to 50%. Ld. Counsel for the applicant further submitted that claim for the grant of disability pension was wrongly rejected vide order dated 03.11.2016 on the ground of disability percentage being less than 20%. Ld. Counsel for the applicant has relied upon the judgment of the Hon’ble Apex Court in the case of **Sukhvinder Singh vs Union of India & Ors**, Civil Appeal No. 5604 of 2010, decided on 25.06.2014 and pleaded that the

applicant is entitled to grant of disability pension and its rounding off.

4. Rebutting arguments of Ld. Counsel for the applicant, Ld. Counsel for the respondents submitted that the disability pension claim of the applicant was rightly rejected because Medical Board has assessed the degree of disablement between 15 -19% for life which is less than the minimum requirement of 20% for the grant of disability pension, therefore, the disability pension is inadmissible to the applicant. However service element of pension has been granted to the applicant.

5. We have heard Shri Vijay Kumar Pandey, Ld. Counsel for the applicant and Shri Ashish Kumar Singh, Ld. Counsel for the respondents and perused the record.

6. In so far as disability which is shown to be assessed as less than 20% is concerned, the law is settled that even if it is less than 20%, it would stand rounded off to 50%. The case in point relied upon by learned counsel for the Applicant is **Sukhvinder Singh Vs. Union of India**, reported in (2014) STPL (WEB) 468 SC. In para 9 of the judgment Hon'ble Apex Court has held as under:-

*"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the*

*morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined.....”.*

7. 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 the 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."*

8. In the instant case, there is no dispute that the applicant's disability has been assessed less than 20% for life. Since the applicant was enrolled in a medically fit condition and discharged after approximately 06 years of service in low medical category and respondents have not produced any documents on record to prove that the disability/disease existed at the time of enrolment, the disability has to be considered as attributable to and aggravated by military service in terms of judgment of ***Dharamvir Singh vs. Union of India and others***, reported in (2013)7 SCC 316 and the applicant is considered entitled for grant of disability pension. In view of the law settled by the Hon'ble Apex Court on this matter, we are of the considered opinion that the applicant is entitled for the benefit of rounding off in terms of Government letter dated 31.01.2001 and the disability element of the pension for life shall stand rounded off to 50% for life.

9. In view of the above, the Original Application No. 176 of 2019 deserves to be allowed, hence **allowed**. The impugned order dated 03.11.2016 rejecting claim for grant of disability element is set aside. The applicant is already in receipt of service element hence respondents are directed to grant disability element of the pension @ 15-19% for life to the applicant, which shall stand rounded off to 50% for life from three years prior to filing of Original Application. The Original Application was filed on 24.07.2018. The entire exercise shall be completed by the respondents within four months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9% to the applicant on the amount accrued till the date of actual payment.

10. No order as to costs.

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

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

Dated : December 2020

UKT/-