

**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**ORIGINAL APPLICATION No. 63 of 2022**

Wednesday, this the 4<sup>th</sup> day of January, 2023

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

IC-31513W Lt. Col. Rajeev Devgan S/o Sri Wazir Chand Devgan, R/o H. No. H/C-317, Ganganagar, Opposite Greater Ganga, Meerut-250001.

**..... Applicant**

Ld. Counsel for the Applicant : **Shri G.S. Singh**, Advocate and  
**Shri Anand Yadav**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110011.
3. Additional Directorate General Personnel Services, Adjutant General’s Branch/Integrated Headquarters of the Ministry of Defence (Army), Room No. 11, Plot No. 108 (West), Brassy Avenue, Church Road, New Delhi-110001.
4. Additional Directorate General of Manpower (Policy & Planning)/MP 5 (B) Adjutant General’s Branch/Integrated

Headquarters of Ministry of Defence (Army), Wing No. 3,  
Ground Floor, West Block-III, R.K. Puram, New Delhi-  
110066.

**.....Respondents**

Ld. Counsel for the Respondents. : **Shri J.N. Mishra**, 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) *Issue/Pass an order or direction of appropriate nature whereby commanding the respondents to grant the disability pension to the applicant forthwith.*
- (b) *Allow the application with all consequential benefits with exemplary cost.*

2. Briefly stated, applicant was commissioned in the Indian Army on 21.12.1975 and pre-maturely retired on 26.02.2001 at his own request in Low Medical Category. At the time of

retirement from service, the Release Medical Board (RMB) held at Military Hospital, Devlali on 31.01.2001/10.02.2001 assessed his disabilities (i) '**CONTUSION LEFT KNEE – 727(a)**' @20% for two years and '**TRAUMATIC SYNOVITIS RT KNEE -731**' @30% for two years, **composite disabilities @40% for two years** and opined the disabilities to be **aggravated** by service. Initial disability claim of the applicant was not processed as he had prematurely retired prior to 01.01.2006. On petition being preferred by the applicant the Resurvey Medical Board (RSMB) held at Military Hospital, Meerut Cantt. On 24.02.2020 assessed the applicant's disabilities (i) '**CONTUSION LEFT KNEE-727**' @20% for life and (ii) '**TRAUMATIC SYNOVITIS RT KNEE -731**' @30% for life, **composite disabilities @44% for life and the intervening period from 26.02.2001 to 11.02.2022 is also covered disability percentage 44%**. In spite of that the applicant's claim for the grant of disability element of disability has not been granted yet. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant submitted that at the time of retirement the RMB has assessed applicant's disability @40% for two years as **aggravated by service**, but the applicant's claim for the grant of disability element of disability pension has not been processed wrongly on the ground that since the applicant was prematurely retired at his own request. His further submission is that in spite of RSMB held on 24.02.2020 assessed applicant's composite disabilities @44% for life and intervening period from 26.02.2001 to 11.02.2022 has been covered disability percentage 44% respondents have not granted disability element of disability pension till date. He 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 50%.

4. On the other hand, Ld. Counsel for the respondents contended that although applicant's composite disabilities @40% for two years have been regarded as **aggravated by military service** by the RMB but since the applicant was prematurely retired from service at his own request, his claim for

grant of disability element of disability pension was not initiated. However, vide Government of India, Ministry of Defence letter No. 16(5)/2008/D (Pension/Policy) dated 19.05.2017 benefits of disability pension have also been extended to pre-2006 premature retiree cases who were retained in service despite disability subject to the condition that their disability was accepted as attributable to or aggravated by service and the officer had forgone lump sum compensation in lieu of the disability. As the applicant's disabilities have been regarded as **aggravated by service @44% for life** by the RSMB his case for the grant of disability element of disability pension has been submitted to the competent authority but for the want of documents/clarification the decision is still awaited. 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 the applicant is entitled to disability pension being a case of discharge on his own request?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. Government of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that *“In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report, President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.”* In view of aforesaid letter, the applicant is entitled for grant of disability element of disability pension even if he has been discharged on his own request on

compassionate grounds. Be it mentioned that as the intervening period from 26.02.2001 to 11.02.2022 is covered disability percentage 44% as such applicant is entitled for the grant of disability element of disability pension.

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 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."*

8. 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.

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)*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D (Pen/Policy) dated 23.01.2018 and admission in the Counter Affidavit that intervening period from 26.02.001 to 11.02.2022 is covered disability percentage 44%, we are of the considered view that benefit of rounding off of disability element of disability pension @40% & 44% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his retirement.

10. In view of the above, the **Original Application No. 63 of 2022** deserves to be allowed, hence **allowed**. The impugned

order, if any, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The applicant is entitled to get disability element @40% / 44% for life which would be rounded off to 50% for life from the next date of his retirement as has been conceded by the respondents in their Counter Affidavit. The respondents are directed to grant disability element to the applicant @40% / 44% for life which would stand rounded off to 50% for life from the next date of his retirement as has been conceded by the respondents in their Counter Affidavit. 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.

11. No order as to costs.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

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

Dated : 04 January, 2023

AKD/-