

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 306 of 2021**Friday, this the 26th day of November, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**No. 4256136-Y Ex. Sepoy Birender Rai, S/o Late nand Lal Rai,
R/o C/o Shri Ravi Chandra, 73, Kotha Parcha, Allahabad (UP)-
211003.

..... 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 Delh-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry
of Defence (Army), DHQ Post Office, New Delhi-110011.
3. The Officer-in-Charge, Bihar Regiment, Danapur Cantt.,
Patna-801503.
4. The Chief Controller of Defence Accounts (Pension),
Draupadi Ghat, Allahabad-14 (UP).

.....**Respondents**Ld. Counsel for the : **Shri Shyam 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 set aside the order dated 28.05.2021 (Annexure No. A-1).*
- (II) *The Hon'ble Tribunal may be pleased to direct the respondents to grant Service Element in addition to Disability Element with effect from 01.01.2006 along with its arrear with interest at the rate of 18 percent per annum.*
- (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 Indian Army on 31.10.1977 and was discharged on 31.05.1990 in Low Medical Category on his own request on extreme compassionate grounds before fulfilling his terms of engagement under Rule 13 (3) III (iv) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held on 05.03.1990 assessed his disability '**TRAUMATIC CATARACT (RT) EYE**' @ 40% for two years and opined the disability as **attributable to military service**. As per policy existed at that time JCOs/OR who seek discharge at their own request on extreme compassionate grounds before fulfilling their terms of engagement were not eligible for grant of disability pension. As such the applicant's case was not processed. On receipt of new policy from Government of India, Ministry of Defence letter No. 16(5)/2008/D (Pension/Policy) dated 19.05.2017, and Principal Controller of Defence Account (Pension), Allahabad Circular No. 583 dated 05.09.2017 whereby all Pre-2006 Armed Forces Personnel who were retained in service

despite disability and retired voluntarily or otherwise were allowed Disability Element, War Injury Element with effect from 01.01.2006 in addition to retiring/service pension or retiring/service gratuity, subject to the condition that their disability was accepted as attributable to or aggravated by Military Service and had foregone lump sum compensation in lieu of that disability. It is also stipulated in the new policy that concerned Armed Forces Personnel still be suffering from the same disability which should be assessed at 20% or more on the date of effect of the said letter. In pursuance the said new policy, the applicant's Re-Survey Medical Board (RSMB) was held at Military Hospital, Danapur Cantt. on 20.12.2017 which assessed his disability @40% for life. Accordingly, the applicant was granted Disability Element for life and P.P.O. was issued. The applicant's preferred representation for grant of Service Element which was rejected vide letter dated 28.05.2021 on the ground that 15 years qualifying service is mandatory to earn Service Element of Pension and service element along with disability element is applicable to invalid out cases only. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that he disease of the applicant was contacted during the service and disability @40% for two has been opined by the RMB as attributable to military service. Further, the RSMB has also assessed applicant's

disability @40% for life. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension, which includes service element and disability element, in similar cases, as such the applicant be granted service element also as well as arrears thereof, as applicant is also entitled to disability pension (both disability element and service element) and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents conceded that disability of the applicant @40% for two years has been regarded as **attributable to military service** by the RMB held at the time of discharge and RSMB held on 20.12.2017 assessed applicant's disability @40% for life. However, he submitted that the applicant was discharged at his own request on extreme compassionate ground after completing 12 years, 07 months and 01 day qualifying service and as per Regulation 132 of Pension Regulations for the Army, 1961 (Part-1) 15 years qualifying service is mandatory to earn service element of the pension and service element along with disability element is applicable to invalided out cases only, hence applicant is not entitled to service element of 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 Re-Survey 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 for disability pension which includes service element and disability element?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. On going through the record we find that on the basis of new policy the applicant has been granted disability element only. On the one hand the applicant has been granted disability element but on the other hand he has been denied service element of disability pension. We are of the opinion that once the applicant has been held entitled for Disability Element, he cannot be denied the grant of service element of disability pension. As such the applicant is held entitled for Disability Pension @40% for life which includes disability element and service element.

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 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.”

8. 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.”

9. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability pension @ 40% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

10. In view of the above, the **Original Application No. 306 of 2021** deserves to be allowed, hence **allowed**. The impugned order dated 28.05.2021, annexed as Annexure No. A-1 with Original Application, rejecting the applicant's claim for grant of service element of disability pension, is set aside. The applicant is held entitled to get disability pension, which includes service element as well as disability element, @40% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant

disability pension, which includes service element as well as disability element, to the applicant @40% 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 23.06.2021. The disability element paid to the applicant shall be adjusted from the arrears for the aforesaid three years period. 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 Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 26 November, 2021

AKD/-