

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 196 of 2021**Wednesday, this the 22nd day of September, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**Ex. Hony. Lt. Subhash Prasad Kushwaha (JC 325541 L), Village
– Kesariapur, Post Office – Tarkulwa, District Deoria.

..... Applicant

Ld. Counsel for the : **Shri Shamshad Alam**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. AG PS M.P-6 B (Imp-II), West Block, R.K. Puram, New Delhi-110011.
4. OC Records, BEG Records, Roorkee.
5. Principal Controller of Defence Accounts (Pension), PCDA (P), Draupadi Ghat, Allahabad-211014.
6. The Manager, PNB Sadar Bazar, Lucknow.

.....**Respondents**Ld. Counsel for the : **Ms. Anju 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 :-

- (a) *Issue/Pass an order or direction of appropriate nature to summon and quash/set aside respondent’s orders denying entitled disability element of pension from 01.11.2010 to 31.12.2015.*
- (b) *Issue/Pass an order or direction of appropriate nature to the respondents to issue a corrigendum PPO to entitle the applicant his arrears on account of his 30% disability element of pension duly rounded off to 50% from 01.11.2010 to 31.12.2015.*
- (c) *Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of teh case.*
- (d) *Allow this application with compounds interest @18% besides costs.*

2. Briefly stated, applicant was enrolled in the Indian Army on 31.12.1980 and was discharged on 31.10.2010 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item I (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) assessed his disability ‘**PRIMARY HYPERTENSION**’ @ 30% for life and opined the disability to be aggravated by service.

Accordingly, the applicant was granted disability element @30% for life with effect from 01.11.2010 vide P.P.O. dated 15.02.2011 which has been further revised vide Corrigendum P.P.O dated 24.11.2013. The applicant's claim for rounding off of disability element from 01.11.2010 to 31.12.2015 has not been granted by the respondents. 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. The disease of the applicant was contacted during the service and opined by RMB as aggravated by military service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant is entitled to rounding off of disability element from 30% to 50% from 01.11.2010 to 31.12.2015 also.

4. On the other hand, Ld. Counsel for the respondents contended that on the application being submitted by the applicant the disability element has been rounded off to 50% with effect from 01.01.2016 in terms of Principal Controller of Defence Accounts (Pension), Prayagraj (Allahabad) Circular No. 596 dated 09.02.2018 and Government of India, Ministry of Defence letter

No.17(01)/2016-D(Pen/Policy) dated 23.01.2018. 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 records and we find that the only question which needs to be answered is whether the applicant is entitled for the benefit of rounding off the disability element of disability pension from 01.11.2010 to 31.12.2015 ?

6. It is 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.”

7. 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 element from 30% to 50% may

be extended to the applicant only from three preceding years from the date of filing of the Original Application and the date of filing of Original Application is 05.03.2021. We further observed that the applicant's disability element has already been rounded off from 01.01.2016 in terms of of Principal Controller of Defence Accounts (Pension), Prayagraj (Allahabad) Circular No. 596 dated 09.02.2018 and Government of India, Ministry of Defence letter No.17(01)/2016-D(Pen/Policy) dated 23.01.2018. As such the applicant is not entitled for grant of rounding off of disability element from 01.11.2010 to 31.12.2015.

8. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**

9. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 22 September, 2021

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