

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

ORIGINAL APPLICATION No. 777 of 2021

Friday, this the 1st day of April, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Neeraj Kumar Gupta, MCEA(R)-II,(Retd), No. 124353-Y
Resident of House No. 188, Town-OON,PO-OON, Mohalla-
Ghanti, District-Shamli, Uttar Pradesh, Pin-247778.

..... Applicant

Learned counsel for the : **Shri Manish Kumar Rai**, Advocate.
Applicant

Versus

1. Union of India through, Secretary, Ministry of Defence, New Delhi-110011.
2. Chief of the Naval Staff, Integrated Headquarters, Ministry of Defence (Navy), PDPA, Sena Bhawan New Delhi.
3. The Logistic officer -in-charge, Naval Pension Office, INS Tana Ji, Sion-Trombay Road, Mankhurd, Mumbai-400088.
4. The Principal Controller of Defence Accounts (Navy), No.1 Cooperage Road, Mumbai 400001.

.....Respondents

Learned counsel for the : **Shri Kaushik Chatterjee**, Advocate
Respondents. Central Govt. Counsel

ORDER

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

reliefs:-

- I. *To issue/pass an order to set-aside /quash the impugned order dated 04.10.2021 (Annexure 1) passed by opposite party No. 2 and order dated 21.02.2019 passed by opposite party No.3.*
- II. *To issue/pass an order or directions to opposite parties to extend the benefit of broad banding in respect of applicant's disability assessed at 19% to make it 20% and thereof grant disability pension @20% and further round it off to 50% by giving the benefit of Govt. of India, Ministry of Defence Letter dated 31.01.2001, w.e.f. date of discharge of applicant i.e.31.01.2019.*
- III. *To issue / pass an order or directions to opposite parties to pay arrear of disability pension along with 12% interest from the date of his discharge i.e. 31.01.2019 till it is actually paid.*
- IV. *Any other suitable relief this Hon'ble Tribunal deems fit and proper may also be granted.*

2. Briefly stated, applicant was enrolled in the Indian Navy on 31.01.1999 and was discharged on 31.01.2019 in Low Medical Category 'S3A2 (H)' having rendered more than 20 years of service. At the time of discharge from service, the Release Medical Board (RMB) held at Visakhapatnam in

July 2018 assessed his disability '**BILATERAL SENSORINEURAL HEARING LOSS (ICD No.H.90.3)**' @ 15-19% for life was aggravated by Naval service. The applicant's claim for grant of disability pension was rejected vide letter dated 21.02.2019 (Annexure R-3). Thereafter, first appeal dated 15.09.2021 preferred by the applicant was not decided for want of certain documents. Applicant has filed this O.A. for grant of disability pension and its rounding off to 50% for life.

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 Navy and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Navy. The disease of the applicant was contracted during the service, hence it is attributable to and aggravated by Naval Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof. He also pleaded for rounding off of disability pension to 50% for life. In support of his claim learned counsel for the applicant relied upon order dated 18.01.2021 passed by this Tribunal in O.A. No. 320 of 2019, **Sgt Rohitash Kumar Sharma vs**

UOI & Ors and order dated 15.07.2021 passed by this Tribunal in O.A. No. 126 of 2021, **Ex Havildar Sur Sari Charan Mishra vs UOI & Ors.**

4. The respondents have not disputed that the medical authority considered the disability '**BILATERAL SENSORINEURAL HEARING LOSS (ICD No.H.90.3)**' @ 15-19% for life was aggravated by Naval service vide para 23 CH VI of GMO 2008 (History of exposure to Loud Noise and firing). However, they have stated that in terms of Regulation 105-B of Navy Pension Regulations, 1964, the applicant's claim has correctly been rejected by PCDA (P), Allahabad because his disability is less than 20% i.e. 15-19%. In support of his contention, learned counsel for the respondents has relied upon the Hon'ble Apex Court judgment dated 11.12.2019 passed in Civil Appeal No 10870/2018, **UOI vs Wing Commander SP Rathore** which lays down that if the disability element is less than 20%, applicant is not entitled to disability element of pension.

5. We have heard the learned counsel for the parties and perused the RMB proceedings. The question before us is straight and simple i.e. is the applicant eligible for disability element of pension with 15-19% of disability which is

aggravated by military service and whether the assessment of 15-19% of disability is in accordance with extant rules/guidelines?

6. On careful scrutiny of the RMB, we find that the RMB has conceded that the disability was initially caused w.e.f. 22.04.2016 due to exposure to loud noise by firing (while posted with INS Kirpan at VIZAG), hence the disability is connected with service. We, however, find that though the disability is aggravated by service, the applicant is not eligible for disability element because his disability has been assessed as 15-19% whereas he is eligible for disability element only if his disability percentage is 20% or more.

7. The RMB has assessed disability element @ 15-19% for life aggravated by military service. In this regard we would like to make reference to table at para 20 of amendment to chapter VII Assessment of Guide to Medical Officers-2008 (Military Pensions) which makes it clear that degree of disablement in case of hearing loss cannot be less than 20%. Therefore, we are of the view that applicant's disability element should be assessed in accordance with rules/guidelines on the subject, issued by the Ministry of Defence.

8. Additionally, the Hon'ble Supreme Court of India in the case of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014) has also frowned on extending the benefit of rounding off only to persons who have been invalidated out of service and denying the same to persons proceeding on normal discharge or to persons proceeding on superannuation. In this case the Hon'ble Supreme Court has dismissed the appeal of the respondents against the order of extending the benefit of rounding off to persons proceeding on normal discharge and superannuation.

9. In view of the above, on the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Ors***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar***, and ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014). Hence the applicant is eligible for the benefit of rounding off to 50%.

10. In view of the above the Original Application deserves to be allowed.

11. Accordingly the O.A. is **allowed**. The impugned orders dated 21.02.2019 is set aside. The respondents are directed to grant disability element of pension to the applicant, deemed to be 20% for life, which would stand rounded off to 50% for life from the next date of applicant's discharge from service i.e. 01.02.2019. 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. In case the respondents fail to give effect to this order within the stipulated period, they will have to pay interest @ 8% on the amount accrued from due date till the date of actual payment.

12. No order as to costs.

13. Miscellaneous application(s), pending if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 01st April, 2022
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