

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 967 of 2022**Monday, this the 24<sup>th</sup> day of April, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 129348Z, Ex. PORTEL, Sunit Kumar Agrahari, S/o Shri Hazarilal, Resident of Flat No. D-705, Bahdur Vihar (AWHO), Sec-8B, Vrindavan Yojna, Lucknow, Uttar Pradesh -226029.

**..... Applicant**

Ld. Counsel for the Applicant : **Shri Manish Kumar Rai**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi -110011.
2. Chief of the Naval Staff, Ministry of Defence (Navy), Integrated Headquarters, Sena Bhawan, New Delhi -110011.
3. Logistic Officer –In-Charge, Naval Pension Office, C/o INS Tanaji, Sion Trombay Road, Mankhurd, Mumbai -400088.
4. Principal Controller of Defence Accounts (Navy) No.1, Cooperage Road, Mumbai -400001.

**.....Respondents**

Ld. Counsel for the Respondents. : **Shri Rajiv Pandey**, 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) *To quash /set aside the Impugned Order PEN/600/D/D/LRDOI 02/2016/129348Z dated Feb 2016 passed by respondent No. 3, as contained in annexure 1 by which the claim for disability pension of applicant has been rejected and Impugned Order dated 18.05.2022, as contained in annexure No.2 passed by respondent, by which the First Appeal of applicant for grant of disability pension has been rejected.*
- (b) *To issue/pass an order or directions to opposite parties for grant of disability element of pension to the applicant for 20% disability rounded off to 50% from the date of his discharge i.e. 29.02.2016 for life by giving the benefit of Govt. of India, Ministry of Defence Letter dated 31.01.2001.*
- (c) *To issue /pass an order or directions to opposite parties to pay arrear of disability element of pension along with 12% interest from date of his discharge i.e. 29.02.2016 till it is actually paid.*
- (d) *Any other relief which the Tribunal may deem fit and proper in the fact and circumstances of the case in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Navy on 02.02.2001 and discharged on 29.02.2016 in Low Medical Category after rendering 15 years & 27 days of qualifying service. At the time of discharge from service, the Release Medical Board (RMB) held at Mumbai on 04.11.2015 assessed his disability ‘**RECURRENT DISLOCATION (RT) SHOULDER ICD-S 43.0**’ @ 20% for life as **attributable to service**, which has been reduced to 10% for life due to

unwilling for surgery. The applicant's claim for grant of disability pension was rejected vide letter dated 29.02.2016. The applicant preferred First Appeal which too was rejected vide letter dated 18.05.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that the applicant's disability has been assessed @20% as attributable to service which has been reduced to 10% due to unwillingness for surgery. The degree of disablement of cannot be reduced on the ground of unwillingness for surgery by the applicant. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability element of disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that since the disability qualifying for disability pension with duration of the applicant has been reduced to @10% for life by the RMB on the ground of unwillingness for surgery by the applicant, hence in terms of Regulation 100 of the Navy Pension Regulations, 1964 the applicant is not entitled to disability 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 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 RMB can reduce the degree of disablement on the ground of unwillingness for surgery?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. In the instant case the disability has been assessed @ 20% for life by the RMB. At page 5 of the RMB proceedings, in the columns of *“Percentage of disablement”* and *“Composite assessment for all disabilities with duration (Max 100%)”* the RMB assessed the disability @20% but in the column *“Disability Qualifying for Disability Pension with duration”* the RMB the percentage of disability has been reduced to @10% for life on the ground that *“view surgery could have cured the disability”* but the applicant has given unwilling for surgery certificate. We are of the opinion that the degree of disablement cannot be reduced by the RMB on the ground of unwilling for surgery by the applicant. Accordingly, we hold that the assessment degree of disability is @20% for life.

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> January 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 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. 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. 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.”*

10. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/D(Pen/Policy) dated 23.01.2018, we are of the considered view that benefit of rounding off of disability element of disability pension @ 20% 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.

11. In view of the above, the **Original Application No. 967 of 2022** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held @20% for life. The applicant is entitled to get disability element @20% 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 element to the applicant @20% 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 16.11.2022. 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

12. No order as to costs.

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

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

Dated : 24 April 2023

AKD/Ashok/-