

RESERVED
Court No.1

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

Original Application No. 157 of 2018

Monday, this the 10th day of December 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal B.B.P. Sinha, Member (A)

Ex. Sub. Ram Avtar (JC 421587L), S/o Patram, resident of Village Titota Veer Gaon, Post Jahangirabad, Bulandshahar (U.P.), PIN-202394.

..... Applicant

Ld. Counsel for the: **Col. A.K. Srivastava (Retd.)**, Advocate Applicant

Versus

1. The Secretary, Government of India (MoD), South Block, DHQ P.O.O, New Delhi-110001.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, DHQ P.O., New Delhi-110001.
3. The Commandant, Army Hospital (R&R), New Delhi.
4. The OC, Records Mechanised Infantry (MIRC), Ahmadnagar (Maharashtra).
5. The Principal Controller of Defence Accounts (PCDA) (Pension), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents

:Dr. Chet Narain Singh
Central Govt Counsel.

ORDER

“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

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

- “(a) Issue/pass an order or direction of appropriate nature to quash/set-aside the respondents, Army Hospital (R&R) letter dated 09 Oct 2017 along with authority referred therein to carry out RSSMB of his 6-10% disability due to **PLANTER FACITIS (RT)** aggravated due to military service for life from the date of his discharge on 31/Oct/2016.*
- “(b) Issue/Pass an order or direction of appropriate nature to quash/set-aside the respondents actions leading to denial of 50% disability element to the applicant after rounding off his 6-10% disability due to **PLANTER FACITIS (RT)** aggravated due to military service for life.*
- “(c) Issue/Pass an order or direction of appropriate nature to the respondents to issue a disability element pension PPO duly rounded off to 50%.*
- “(d) Issue/Pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*
- “(e) Allow this application with cost.”*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 29.10.1988 and was discharged from service on 31.10.2016 in low medical category ‘A2 (Permanent)’ under Rule 13 (3) I (i) (a) of the Army Rules 1954. The Release Medical Board (RMB) of the applicant opined his disability “**PLANTER FACITIS (RT)**” to be aggravated by military service with disability @ 6-10% for life. Thereafter the applicant is in receipt of service pension,

however he has been denied disability pension due to his disability percentage being less than 20%, hence, this O.A.

3. Ld. Counsel for the applicant submitted that since the applicant was suffering from the disability "PLANTER FACITIS (RT)" while performing military duty and the RMB has opined the disability to be aggravated by military service, therefore the applicant is entitled to disability pension. Ld. Counsel for the applicant further submitted that claim for grant of disability pension was rejected vide order dated 19.12.2016 on the ground of disability percentage being less than 20%. Thereafter the applicant preferred first appeal in January 2017 against rejection of disability pension claim. After a lapse of 06 months when no decision on First Appeal was received, applicant has moved this Original Application. Ld. Counsel for the applicant has relied upon the judgment of Hon'ble Apex Court in the case of **Sukhwinder Singh vs Union of India & Ors**, (2014) 4 SCT 163 (SC) and pleaded that the applicant is entitled to grant of disability pension and its rounding off.

4. Rebutting arguments of Ld. Counsel for the applicant, Ld. Counsel for the respondents submitted that the disability pension claim of the applicant was rightly rejected because though the RMB had conceded aggravation but it had assessed the degree of disablement at 6 to 10% for life which is less than the minimum requirement of 20% for grant of disability

pension and therefore the disability pension is inadmissible to the applicant.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. 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 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."

7. In the instant case, there is no dispute that the applicant's disability has been assessed as 6-10% for life and has been conceded as aggravated by military service. This fact has also been accepted by the respondents. Thus in view of the law settled by the Hon'ble Apex Court on this matter, we are of the considered opinion that the applicant is entitled for the benefit of rounding off in terms of Government letter dated 31.01.2001 and the disability element of the pension @6-10% for life shall stand rounded off to 50% for life from the date of discharge.

8. In view of the above, the Original Application No.157 of 2018 deserves to be allowed, hence **allowed**. The impugned order dated 09.10.2017, enclosed as Annexure No. A-1 of Original Application, is set aside. The respondents are directed to grant disability element of the pension @6-10% for life to the applicant, which shall stand rounded off to 50% for life from the date of discharge of the applicant i.e. 31.10.2016. The entire exercise shall be completed by the respondents

within four months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9% to the applicant on the amount accrued till the date of actual payment.

No order as to costs.

(Air Marshal B.B.P. Sinha) **(Justice S.V.S. Rathore)**
Member (A) **Member (J)**

Dated : December, 2018
AKD/-