

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 530 of 2022**Friday, this the 16<sup>th</sup> day of December, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Lt Gen Rakesh Kumar Anand, Member (A)**No. 14675580P Ex Cfn Inst. Mech. Surya Bhan Giri  
S/o Shri Ram Kishoon Giri  
R/o B-284, Sainik Vihar, Nanda Nagar, PO – Kunraghat,  
District – Gorakhpur (UP) – 273008

..... Applicant

Ld. Counsel for the Applicant: **Shri Vijay Kumar Pandey**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, RK Puram, New Delhi-110011.
2. Dir PS-4, Adjutant General's Branch, IHQ of MoD (Army), New Delhi – 110011.
3. OIC Record, Records EME, Secunderabad – 500021.
4. PCDA (P), Draupadi Ghat, Allahabad (UP) – 211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Shyam Singh**,  
Central Govt Counsel**ORDER**

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

“(i) That this Hon'ble Tribunal may kindly be pleased to set aside the impugned rejection order of disability pension, if any, and grant the disability element of pension @ 30% rounded off 50% for life to the applicant w.e.f. 03.08.1982 to actual date of payment and also onwards and provide the interest on the aforesaid delayed amount of disability pension with 18% p.a.

since due date to actual date of payment in the interest of justice.

(ii) That this Hon'ble Tribunal may kindly be awarded the cost Rs. 20,00,000/- (Rupees Twenty Lac Only) to the applicant against the opposite parties.

(iii) That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.”

2. Briefly stated facts of the case are that the applicant was enrolled in Indian Army on 27.09.1975 and was invalided out from service with effect from 01.08.1982 (AN) in low medical category EEE under Rule 13 (3) III (i) of Army Rules, 1954. The Invaliding Medical Board (IMB) assessed his disability **“RHEUMATIC POLYARTHIRITIS”** @ 30% for two years and considered as attributable to military service. Accordingly, P.P.O. dated 26.02.1983 for grant of disability element was issued and later on it has been granted for life w.e.f. 02.08.1982. Presently the applicant is in receipt of 30% disability pension for life vide PPO dated 25.06.2003 and has moved this Original Application for grant of benefit of rounding of disability pension w.e.f. 02.08.1982 from 30% to 50%.

3. Learned counsel for the applicant argued that respondents are not granting the disability pension to the applicant w.e.f. 03.08.1982 in very illegal and arbitrary manner ignoring the settle position of law. The disability of the applicant was assessed @ 30% for life which should be rounded off 50% for life being attributable to military service but respondents have denied the benefit. Therefore, in view of the

Hon'ble Apex 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), and Govt. of India, Ministry of Defence letter dated 31.01.2001, the applicant is entitled to benefit of rounding off of disability element @ 50% for life.

4. On the other hand, though Ld. Counsel for the respondents submitted that presently the applicant is in receipt of 30% disability pension consisting of 30% disability element for two years w.e.f. 02.08.1982 and service element for life w.e.f. 02.08.1982 vide PPO dated 26.02.1983. Later on applicant has been granted disability element @ 30% for life vide PPO dated 25.06.2003. Now the applicant has moved this Original Application for grant of benefit of rounding of disability pension w.e.f. 02.08.1982 from 30% to 50%. He further submitted that for rounding off benefit of disability element, the applicant is required to approach his PDA from where he is drawing pension, since as per the revised policies the concerned PDAs are authorised to revise pension at their end.

5. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of the 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) wherein the Hon'ble Apex Court has 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.”*

6. In the instant case, there is no dispute that applicant is in receipt of 30% disability element for life as this fact has been accepted by the respondents. In view of the settled law on this matter, we are of the considered opinion that the applicant is entitled to the benefit of rounding off to 50% for life from the date of invaliding out from service. Since the benefit of rounding off is applicable w.e.f. 01.01.1996 as per Govt. of India, Ministry of Defence letter dated 31.01.2001 and the applicant was invalidated out from service w.e.f.

02.08.1982, the applicant will be entitled for benefit of rounding off from 01.01.1996 only.

7. In view of the above, the Original Application is allowed. The applicant is entitled to the benefit of rounding off of disability element from 30% for life to 50% for life from 01.01.1996 only as the applicant is pre-1996 retiree. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrears of disability element will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 04.07.2022. The respondents are directed to give effect to this order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

8. No order as to costs.

9. Pending Misc. Application(s), if any, shall stand disposed off.

(Lt Gen Rakesh Kumar Anand)  
Member (A)

Dated: December, 2022  
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(Justice Umesh Chandra Srivastava)  
Member (J)