

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 600 of 2023**Monday, this the 26th day of February, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 15417485K, Ex. Nk (TS) Mujavar Habib Husen, Resident of VPO Wakhari, Teshil – Pandharpur, District- Solapur, Maharashtra.

..... ApplicantLd. Counsel for the : **Shri Vinay Pandey**, Advocate.
Applicant

Versus

1. Union of India, through, Secretary, Ministry of Defence, (Army), DHQ PO, - New Delhi -11.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. The Officer – in –charge, Records, Army Medical Corps, Lucknow.
4. Principal Controller of Defence Accounts ,Draupadi Ghat, Prayagraj, (U.P).

.....RespondentsLd. Counsel for the : **Shri J.N. Mishra**, Advocate
Respondents. Central Govt. Standing Counsel
Assisted by **Major Naman Gupta**,
Departmental Representative

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, 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 to appropriate nature to quash the decision taken by Army Authorities as mentioned in letter of Records Army Medical Corps, letter bearing number 15417485K/REI/DPI dated 26 May 2022.*
- (b) *Issue/pass an order or direction of appropriate nature directing the respondents to grant disability pension with the benefit of rounding off.*
- (c) *Issue/pas an order or direction of appropriate nature to the respondents to make the payment of arrears along with interest accrued to the applicant due to revision of his pension and continue to pay regular pension to the applicant in the revised rate.*
- (d) *Issue/pass any other or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Indian Army on 17.04.2003 and discharged on 30.04.2022(AN) in Low Medical Category on fulfilling the terms of engagement under Rule 13(3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Allahabad on 14.12.2021 assessed his disability ‘**PIVD (C4-C5) (ICD-M50)**’ @20% for life as **aggravated by 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 26.05.2022. The applicant preferred First

Appeal dated 15.06.2022 but of no avail. 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 aggravated by service which has been reduced to 10% due to unwilling for surgery. The degree of disablement of cannot be reduced on the ground of unwillingness certificate given 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 unwilling for surgery by the applicant, hence as per Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that *"An individual released/retired/ discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at*

20% or more” 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 unwilling 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 8 of the RMB proceedings, in the columns of *“Percentage of disablement with duration”* the RMB endorsed that *“10% (Ten Percent forlife) (20% (Twenty percent) was given, 10% (Ten percent) reducecd due to unwilling for surgery)”*. It was done due to unwilling certificate given by the applicant. 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 10th 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. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & ors (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 the next date of his discharge.

10. In view of the above, the **Original Application No. 600 of 2023** 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 from the next date of his discharge. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life from the next date of his discharge. 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

11. No order as to costs.

12. Major Naman Gupta, Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 26 February, 2024

Ashok/AKD/-