

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 389 of 2019**Friday, this the 30<sup>th</sup> day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Serve No. 13985434L Ex Recruit Feroz Khan S/o Shri M.A. Khan, Resident of Bangali Tola, Telibagh, Lucknow, PIN Code-226002, U.P.

..... Applicant

Ld. Counsel for the Applicant: **Shri Om Prakash Kushwaha**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence (Army), New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army). Sena Bhawan, New Delhi.
3. Officer In-Charge Records, Army Medical Corps, PIN-900450, C/O 56 APO.
4. P.C.D.A. (Pensions), Draupadi Ghat Allahabad-14.

..... Respondents

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

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

“(a) To issue/pass an order or directions to set aside/quash the order dated 08.08.2018 passed by respondents.

(b) To issue/pass an order or directions to the respondents for Grant of benefit of broad banding/rounding of Disability element of disability pension from 04.11.1993 to 29.09.1998 @ 40% to @ 50% along with 12% interest of the arrear in light of Hon'ble Apex Court Judgments and Government of India, MoD letter dated 31.01.2001

(c) To issue/pass any other order or directions as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

(d) To allow this original application with costs.

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 08.12.1992 and was invalided out from service on 04.11.1993 in low medical category 'BEE' and has rendered only than 10 months and 27 days of service. At the time of invaliding out from his service IMB was conducted at Base Hospital, Lucknow on 20.09.1998 which assessed his disability '**STRESS FRACTURE NECK OF FEMURE LT**' @ 40% for 05 years attributable to military service and disability element for the period from 04.11.1993 to 19.09.1998 was granted to him vide PPO No D/001076/94 (Army) dated 25.04.1994. Thereafter, Re-Survey Medical Board (RSMB) held at Military Hospital, Meerut on 04.08.1998 which has assessed applicant's disability 30% for two years from 20.09.1998 but PCDA (P) Allahabad had reduced the disability percentage to 20% for two years which was also granted to applicant. Further RSMB held in the year 1998 has assessed his disability element @ 11-14% (i.e. below 20%) for life and he seems to be not entitled to disability element of pension being below 20%. The applicant has filed the instant O.A. for rounding off of disability element of pension for the period from 04.11.1993 to 19.09.1998 which he received @ 40% for five years.

3. Ld. Counsel for the applicant pleaded that the applicant was granted disability element of pension for the period from 04.11.1993 to 19.09.1998 @ 40% for five years but since rounding off of disability.

Pension came into existence w.e.f. 01.01.1996, he is entitled to rounding off of disability element of pension for that period.

4. On the other hand, learned counsel for the respondents submitted that applicant has been granted his due disability element of pension for the period from 04.11.1993 to 19.09.1998. His further submission is that in subsequent RSMB applicant's disability has been assessed @ 11-14% (i.e. below 20%) for life, hence he not entitled to disability element of pension. He pleaded for dismissal of O.A.

5. We have heard learned counsel for both sides and perused the material placed on record.

6. On careful perusal of the record, it transpires that applicant was granted disability element of pension @ 40% for five years (04.11.1993 to 19.09.1998), and further RSMB has deduced his medical disability @ 11-14% (i.e. below 20%) for life, therefore, he is not entitled to disability element of pension thereafter. The applicant has come forward mainly for getting rounding off benefits of disability element of pension for the period 04.11.1993. to 19.09.1998 which he has already received. We are clear that rounding off of disability element of pension came into existence w.e.f. 01.01.1996 therefore applicant is entitled to rounding off of disability element of pension w.e.f. 01.01.1996 to 19.09.1998 in terms of Hon'ble Apex Court judgment in the case of ***Union of India and Ors vs. Ram Avtar & Ors*** (Civil Appeal No 418 of 2012 dated 10<sup>th</sup> December 2014).

7. In view of the above O.A. is allowed. Impugned order dated 08.08.2018 is set aside.

8. *Respondents are directed to grant rounding off of disability element of pension benefits to applicant for the period from 01.01.1996 to 19.09.1998 within a period of four months from today on receipt of certified copy of this order.*

9. *Default will invite interest @ 8% p.a.*

10. No order as to costs.

11. Pending applications, if any disposed off.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

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

Dated : 30<sup>th</sup> July 2021

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