

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Court No. 1 (E Court)**

**ORIGINAL APPLICATION No. 286 of 2020**

Thursday, this the 08<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)”**

No. 6610922Y Ex Sep Baleshwar Rai, S/o Shukh Dev Rai,  
R/o Vill & Post – Mahraur, The- Mohamadabad (Yusufpur)  
Distt- Ghazipur (U.P.)

..... Applicant

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

Versus

1. Union of India, through its Secretary, Ministry of Defence, (Army), New Delhi.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi.
3. Officer-in-Charge, ASC Records Dakshin (South), Bangalore – 560007.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.)-211014.

.....Respondents

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

## ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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. To issue/pass an order or direction to set aside/quash the PCDA (P), Allahabad letter dated 22 Nov 1996, Annexure A-1 to this Original Application.*

*B. To issue/pass an order or directions to the respondents to consider the applicant for restore the disability element of disability pension from 01 Jul 1996 with 12% interest on arrear and benefit of rounding off/broad banding of disability element of disability pension @ 20% to @ 50% wef 01.01.1996 to till date, in terms of Govt of India, letter dated 31.01.2001, and Ministry of Defence, Department of Ex Servicemen Welfare (Pension/Legal) dated 18.04.2016 with all consequential benefits.*

*C. To issue/pass any other order or direction 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 cost.*

2. The brief facts of the case are that the applicant was enrolled in the Army on 12.09.1962 with terms of engagement of 10 years colour service and 10 years in reserve. He was discharged from service on 30 Sep 1979 on fulfilling the condition of his enrolment under Army Rule 13 (3) items III (i) after serving 17 years and 18 days in army. The applicant is getting service pension from the date of discharge vide PPO No S/71796/79 dated 06 Dec 1979 and the same is being revised from time to time. The applicant was placed in low medical category for the disability **“FRACTURE BASE OF 5”**

**METATARSAL (RT) WITH FRAC NECK OF 2,3,4<sup>TH</sup> METATARSAL BONES**". At the time of discharge, Release Medical Board was held and disability of the applicant was assessed as 20% for two years and his disability was found as attributable to military service due to injury sustained while on authorized military duty. Accordingly disability pension was granted to the applicant from 01 Oct 1979 to 26 Aug 1981. In addition, applicant was granted disability pension upto 30 Jun 1996 as per recommendation of review medical board held from time to time. Review Medical Board of the applicant held at Military Hospital Allahabad in the year 1996 assessed his disability 10 to 15% (Less than 20%) for ten years with effect from 01 Jul 1996. Disability pension of the applicant was discontinued being less than 20% and individual was informed vide letter dated 17.12.1996. His appeal for grant of disability pension was also rejected vide letter dated 03.05.1999. His last resurvey medical board was held in the year 2002 and disability was assessed as nil for life as a result his claim for grant of disability pension was rejected and individual was intimated vide letter dated 19.02.2003. His appeal for grant of disability pension was also rejected vide letter 15.09.2005. Being aggrieved, the applicant has approached this Tribunal for grant of disability pension.

3. Learned counsel for the applicant submitted that since the applicant was enrolled in medically fit condition and thereafter

he was discharged from service in Low Medical Category and his disability was consider as attributable to military service, hence he is entitled to disability pension for the period from 01.07.1996 till life. This action of the respondents stopping the disability pension of the applicant is against the principles of natural justice. He pleaded that various Benches of the Armed Forces Tribunal have granted disability pension in similar cases, as such, the applicant is also entitled to disability pension and its rounding off to 50%.

4. Per contra, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that applicant was discharged from service on completion of terms of engagement and he is getting service pension. Since the assessment of the disability element from the period 01.07.1996 is 10-15% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfill in terms of Regulation 173 of Pension Regulations for the Army 1961 (Part-I), therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He pleaded for dismissal of O.A.

5. Heard learned counsel for the parties and perused the record.

6. We have given our considerable thoughts to both sides and have carefully perused the records. This is a case where the RSMB had initially assessed the disability of the applicant

@ 20% for two years and considered it as attributable to Military Service. Disability of the applicant was assessed 20% by RSMB upto 30.06.1996. Hence applicant was granted disability element till 30.06.1996. RSMB held on 10.04.1996 assessed his disability @ 10-15% from 01.07.1996 and later on nil for life. Accordingly, disability element of the applicant was stopped.

7. Thus the issues before us are simple and straight forward i.e.

(a) Is the applicant entitled to disability element assessed by RSMBs @ 10-15% and Nil?

(b) Is the applicant entitled to rounding off of his disability element?

8. As far as disability element is concerned, it has been reduced to 10-15% by RSMB, hence it is relevant to mention Rule 186 of Pension Regulation for the Army, 1961 (Part- 1) which reads as under:-

*“186 (1) An individual who is invalided out of service with a disability attributable to or aggravated by service but assessed at below 20 per cent shall be entitled to service element only.*

*(2) An individual who was initially granted disability pension but whose disability is re-assessed at below 20% subsequently shall cease to draw disability element of disability pension from the date it falls below 20 per cent. He shall however continue to draw the service element of disability pension.”*

*(emphasis supplied)*

9. The law on the point of grant of disability pension and its rounding off is no more res integra and the law on this matter

has been well settled by Hon'ble Apex Court 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)***. However, the law on limitations is also well settled as per judgment of Hon'ble Apex Court in the case of ***Shiv Dass vs. Union of India*** reported in 2007 (3) SLR 445 which has 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 para 9 of the judgment, Hon'ble Apex Court has held as under:-

*"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. Additionally the Hon'ble Supreme Court vide order dated 13.07.2018 passed in Civil Appeal Diary No 21811 of 2018, ***Union of India through its Secretary & ors vs. Sgt. Girish Kumar*** has stayed the decision of the Larger Bench of Armed Forces Tribunal, Principal Bench, New Delhi, in the case of ***Ex Sergeant Girish Kumar (supra)*** on the matter of extending

the benefits of rounding off from 1996. For convenience sake, order dated 13.07.2018 is excerpted as under:-

*"Leave to appeal granted.  
Delay condoned.  
Issue notice.  
In the meanwhile, there shall be a stay of operation of the impugned judgment and order passed by the Armed Forces Tribunal. However, learned Additional Solicitor General says that he will advise the Union of India to release the disability pension for a period of three years prior to the date of filing the original application before the Tribunal or the date of retirement as may be applicable."*

11. Thus in the final analysis and in the light of above judgment the applicant is not entitled to disability element and its rounding off also.

12. In view of the above, we are of the considered opinion that since the periodical RSMBs have assessed the disability of the applicant at less than 20% i.e. 10-15% and later on Nil, the applicant therefore has no claim to disability element beyond 01.07.1996 as upheld by Hon'ble Apex Court in the case of **Balbir Singh Vs UOI & Others** in Civil Appeal No 3086 of 2012, decided on 08.04.2016. The Hon'ble Apex Court has held that *" it is not in dispute that the appellant was discharged from service/invalided out of service on account of 100% permanent disability suffered by him during the course of service. It is also not in dispute that the said disability was held to be attributable to military service. That the disability was subsequently reduced to fall below 20% is also common ground. In as much as the authorities*

*stopped the disability pension, they committed no wrong. Stoppage of the disability pension did not however mean that the service element of the pension could also be stopped.”*

13. Thus the law is clear that if the disability percentage reduces below 20% in Review Medical Board then the disability element of disability pension can be stopped. However, the service element shall continue for life. A conceptuous of our observations made hereinabove is that the applicant has failed to make out a case in his favour for granting disability element of disability pension beyond 01.07.1996. Hence we don't find anything wrong or illegal in the rejection of his disability element of disability pension beyond 01.07.1996.

14. Accordingly, the Original Application No. 286 of 2020 having no force is hereby **dismissed**.

15. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: July, 2021  
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