

**E -Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 472 of 2020**Wednesday, this the 14<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)”**Ex Hav Yogesh Jhadbade, S/o Sri Laljee Jhadbade, C/o Amit, Ramganj  
Bhatauli RURA, Derapur Road, Kanpur Dehat (U.P.)- 209303.

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi- 110011.
2. The Chief of Army Staff, IHQ of Ministry of Defence (Army), South Block, New Delhi- 110011.
3. Officer-in-Charge Records, Signal Records, Jabalpur.
4. PCDA (Pensions), Draupadhi Ghat, Allahabad (UP)-211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri GS Sikarwar,  
Central Govt. Counsel**

**ORDER****“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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 of appropriate nature to quash/set aside respondent’s The Records Signals, Jabalpur letter dated 22/06/2020 (Annexure No. A-1) intimating that the applicant’s claim for disability element of due to PIVD C 6 & & was rejected being considered below 20% since only 10% was recommended for pension and also asking applicant to justify delay in submitting his appeal along with other documents (irrelevant) mentioned in para 3 and thereafter grant his disability element of pension w.e.f. 01.03.2018.*
- (b). *Issue/ pass an order or direction of appropriate nature to quash/ set aside respondent’s recommendation on page 5 of Part V of applicant’s RMB proceedings recommending only 10% out of a total 20% composite disability due to PIVD C 6 & 7 despite entire disability was recommended aggravated by military service for life and thereby grant 20% in terms of MoD Policy dated 31.01.2001 duly supported by the decision of Hon’ble Supreme Court in Civil Appeal No 418 of 2012 titled UOI & Ors V Ram Avtar wef 01.03.2018.*
- (c). *Issue/ pass an order or direction of appropriate nature to the respondent to summon and quash/ set aside such letters/ orders that are leading to denial of 20% disability element of pension to the applicant duly rounded off to 50% w.e.f. 01.03.2018.*
- (d). *Issue/ Pass an order or direction of appropriate nature to the respondent to grant sanction for 20% disability element of pension to the applicant duly rounded off to 50%.*

- (e). *Issue/ pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (f). *Allow this application with costs.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 27.03.2002 and was discharged from service in Low Medical Category on 28.02.2018 (AN) for the disability '**PIVD C6-7**' under Army Rule 13 (3) item III (iv) on his own request before fulfilling the conditions of enrolment of service. Release Medical Board held at Military Hospital, Mhow (MP) on 02.01.2018 considered the disability as aggravated by military service and connected with service due to physical stress and strain of military service and assessed composite assessment for the disability @ 20% for life and net assessment qualifying for disability pension @ 10% for life. Applicant has been granted service element of pension vide PPO No 157201800986 from the date of discharge. Disability pension claim of the applicant was rejected by the respondents vide order dated 09.08.2018 being less than 20%. It is in this perspective that the applicant has preferred the present Original Application.

3. Ld. Counsel for the applicant submitted that since the applicant was suffering from the disability '**PIVD C6-7**' 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 09.08.2018 on the ground of disability percentage being less than 20%. 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 @ 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 question before us to decide is whether applicant discharged on his own request and his disability has been assessed below 20% is entitled disability pension and its rounding off or not?

7. Applicant was discharged from service before completion of terms of engagement in low medical category, his discharge from service should be considered as invalidation from service as has been held by the Hon'ble Apex Court judgment in the case of ***Sukhwinder Singh vs Union of India & Ors*** reported in (2014) STPL (WEB) 468 SC. In our view, the case is fully covered by the aforesaid decision of Hon'ble the Apex Court in which the substance of what has been held is that even if an individual is assessed to be less than 20%, the "*disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.*". Para 9 of the judgment, being relevant is quoted below.

*“9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorizing the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. **Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension.**”*

8. It is a fact that before 2006 i.e. pre-VI Central Pay Commission, as per the rules existing at that time, pre-mature discharge at own request made a soldier ineligible for disability pension. However, it is also a fact that with effect from 01.01.2006, as per recommendation of Sixth Central Pay Commission, soldiers proceeding on pre-mature discharge are also eligible for disability pension. This aspect of VI Central Pay Commission whereby Pre-mature discharge cases also become eligible for disability pension was clarified by Ministry of Defence letter No. 16(5)/2008/D (Pen/Policy) dated 29.09.2009 and Principal Controller of Defence Accounts (Pensions), Allahabad Circular No. 433 dated 25.03.2010.

9. 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 10<sup>th</sup> 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.”*

10. In the instant case, there is no dispute that the applicant's disability has been assessed @ 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 @ 10% treated as 20% for life shall stand rounded off to 50% for life from the date of discharge.

11. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The impugned order rejecting disability pension claim is set aside. The respondents are directed to grant disability element of the pension @ 10% deemed to be 20% for life to the applicant, which shall stand rounded off to 50% for life from the date of discharge of the applicant i.e. 01.03.2018. 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 8% to the applicant on the amount accrued till the date of actual payment.

12. No order as to costs.

13. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)  
Dated : 14 July, 2021  
Ukt/-