

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 177 of 2022**Thursday, this the 07th day of July, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Amrendra Kumar, CHEA (R) (Retd.), No. 120967-A, resident of D-14, JP Colony, Mander Mod, Bamarauli, District Prayagraj, Uttar Pradesh, Pin – 221012.

..... ApplicantLd. Counsel for the Applicant : **Shri Manish Kumar Pal**, Advocate.

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Naval Staff, Integrated Headquarters, Ministry of Defence (Navy), PDPA, Sena Bhawan, New Delhi-110011.
3. The Logistic Officer In-charge, Naval Pension Office, INS Tana Ji, Sion-Trombay Road, Mankhurd, Mumbai-400088.
4. The Principal Controller of Defence Accounts (Navy), No. 1, Cooperage Road, Mumbai-400001.

.....RespondentsLd. Counsel for the Respondents. : **Shri Arun Kumar Sahu**, Advocate
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 :-

- (I) To issue/pass an order to set aside/quash the impugned order dated 08.11.2016 passed by Opposite Party No. 3 and order dated 20.12.2021 passed by opposite party no. 2 as contained in Annexure 1 to this original application.*
- (II) To issue/pass an order or directions to the opposite parties for grant of disability element of pension to the applicant for 20% disability to be rounded off to 50% from the date of his discharge i.e. 31.01.2017 for life by giving the benefit of Govt. of India, Ministry of Defence letter dated 31.01.2001.*
- (III) To issue/pass an order or directions to opposite parties to pay arrears of disability element of pension along with 12% interest from the date of his discharge i.e. 31.01.2017 till it is actually paid.*
- (IV) Any other suitable relief this Hon'ble Tribunal deems fit and proper may also be granted.*

2. Briefly stated, applicant was enrolled in the Indian Navy on 28.01.1997 and was discharged on 31.01.2017 in Low Medical Category on fulfilling the conditions of his enrolment. At the time of discharge from service, the Release Medical Board (RMB) held at Visakhapatnam on 15.09.2016 assessed his disability '**PIVD LV 4-5**' @20%, but it was reduced to 14% for life due to unwilling for surgery by the applicant, and opined the disability to be **aggravated** by service. The applicant's claim for grant of disability element of disability pension was rejected vide letter dated 08.11.2016. The applicant preferred First Appeal dated 09.12.2021 which was processed vide letter dated 20.12.2021 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 initially the percentage of the disability was granted as 20% for life, aggravated by Naval service, however, his percentage of disability was reduced to 16% as the applicant had submitted unwillingness for surgery. 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 the disability i.e. '**PIVD LV 4-5**' has been assessed as 20% for life and disability was considered as aggravated by service but disability qualifying element for disability pension was assessed @14% for life (6% deducted from total percentage of disability as the applicant had submitted unwillingness for surgery). As per Regulation 105-B of Navy Pension Regulations, 1964 the disability should be either attributable to or aggravated by the Naval Service and minimum assessment for the disability is mandatorily required to be 20% or more. Since applicant's disability was reduced to 14% for life, applicant is not entitled 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.

6. Perusal of record reveals that the RMB held before discharge originally assessed the disability of the applicant as 20% for life and aggravated by Naval Service. The net disability assessment for grant of disability pension was reduced from 20% to 14% for life at a subsequent stage by the respondents on the grounds of unwillingness for surgery (spinal operation).

7. Considering all aspect of the case, we are of the opinion that spinal operation has not reached a level of validating and trust where success can be guaranteed for 100% recovery. On the contrary there is a lot of reservations on undertaking spinal operation. Hence, the unwillingness of the applicant for surgery (spinal operation) in our opinion is not a valid ground for reducing his disability percentage from 20% to 16% specially when one considers the complications which are associated with spinal operation. As such, we hold that the percentage of disability of the applicant is 20% for life.

8. 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 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.”

9. 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.

10. It is also 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 the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“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.”

11. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (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 pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

12. In view of the above, the **Original Application No. 177 of 2022** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant claim for grant of disability element of disability pension, are set aside. The applicant's disability 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 w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 28.02.2022. 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

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 07 July, 2022

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