

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 75 of 2022**Tuesday, this the 05<sup>th</sup> day of July, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Ex 777125 Sgt Shrawan Kumar, Son of Shri Raj Kumar, R/o House No 62, Ballabh Kunj Colony, Phase 3, Mauja & Post Office- Pali Kheda, Sahara, District- Mathura, Uttar Pradesh PIN- 281001.

..... Applicant

Ld. Counsel for the Applicant : **Shri Manoj Kumar Awasthi,**  
Applicant **Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, (Air Force), New Delhi- 110011.
2. The Chief of Air Staff, Air Headquarter, Vayu Bhawan, New Delhi- 110011.
3. Director, Dte of Air Veteran, Subroto Park, New Delhi – 110010.
4. Office of Joint CDA (Air Force), New Delhi, C/o Air Force Central Accounts Office, Subroto Park, New Delhi- 110010.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Pushpendra Mishra,**  
**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). *To issue pass an order to set aside/ quash the order No. HQ/99798/1/777125/12/18/DAV (DP/RMB) dated 10.04.2018, order No. Vide Order No Air HQ/99798/5/419/777125/DP/AV-III (Appeals) dated 20.02.2020 passed by respondent No 3 and vide order No HQ/99798/5/2<sup>nd</sup> Appeals/75/20/777125/DP/AV-III dated 30.07.2021 passed by respondent No. 3.*
- (b). *To issue pass an order or directions to the respondents to grant Disability Element of Disability Pension element @ 15-19% with effect from date of superannuation i.e. 30.06.2017 in light of Hon’ble Apex Court judgments.*
- (c). *To direct the respondents to grant Disability Pension element as well as Disability Element @ 15 – 19% with effect from 31.12.2018 i.e. the date of discharge and further rounding off of disability pension from @ 15- 19% to 50% for life to the applicant and pay due arrears including consequential benefits with interest @ 12% p.a. till final payment is made.*

*(d). Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstance of the case be also granted along with cost of the O.A.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Air Force on 17.12.1998 and was discharged from service in Low Medical Category A4G2(P) on 01.01.2019 after rendering 20 years and 15 days of regular service. Release Medical Board (RMB) held on 16.03.2018 at 18 Wing, AF, C/o 56 APO considered the disability as attributable to Air Force service and assessed the disability @ 15-19% for life. Applicant was granted service element of pension from the date of discharge. Disability pension claim of the applicant was rejected by the respondents vide order dated 27.08.2018 being less than 20%. Applicant submitted appeal for grant of disability element which was also rejected. It is in this perspective that the applicant has preferred the present Original Application for grant of disability element.

3. Ld. Counsel for the applicant submitted that since the applicant was suffering from the disability '**Chronic Otitis Media (Opte) with hearing loss ears (H 66.0, Z09.9)**' while performing air force duty and the RMB has opined the disability to be attributable to air

force service, therefore the applicant is entitled to disability element. Ld. Counsel for the applicant further submitted that claim for grant of disability element was rejected vide order dated 27.08.2018 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 held that if disease/ disability was assessed below 20% then applicant entitled to re-instate in service with all consequential benefits i.e. seniority, promotion etc and if disability assessed 20% or above then respondents will give the disability pension to the applicant even though the disability was neither attributable nor aggravated due to military service. He 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 @ 15-19% for life which is less than the minimum requirement of 20% for grant of disability pension as per Rule 153 of Pension Regulations for Indian Air Force, 1961 (Part-1) which stipulates that *"Unless otherwise specifically provided, disability pension may be granted to an individual who is invalided from service*

*on account of a disability which is attributable to or aggravated by service and is assessed at 20% or over".* In the instant case RMB has assessed disability of the applicant as attributable to service but disability was found below 20% that caused non fulfilment of criteria, and therefore the disability element was not granted to the applicant. He pleaded that instant O.A. has no substance and is liable to be dismissed.

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 whose disability has been considered as attributable to air force service and assessed below 20% is entitled disability element and its rounding off or not?

7. In so far as disability which is shown to be assessed as less than 20% is concerned, the Guide to Medical Officers (2008), has amended the earlier Regulation (2002) regarding percentage of disability to be granted to such cases. As per the 2008 amendment (Chapter VII Para 20) assessment of hearing loss shall be treated @ 20% minimum.

8. The law is settled that even if disability percentage is 20%, it would stand rounded off to 50% (in cases of superannuation

also). The case in point relied upon by the Applicant is **Sukhhvinder Singh Vs. Union of India**, reported in (2014) STPL (WEB) 468 SC. In para 9 of the judgment Hon'ble Apex Court has held as under:-

*“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.....”.*

9. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of **K.J.S. Buttar vs. Union of India and Others**, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, **U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off.

10. In the instant case, there is no dispute that the applicant's disability has been assessed @ 15-19% for life and has been conceded as attributable to air force service. This fact has also been accepted by the respondents.

11. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The impugned orders rejecting claim for grant of disability element are set aside. The applicant is already in receipt of service element, hence respondents are directed to grant disability element of the pension @ 15% -19% deemed to be 20% for life (in accordance with relevant Rule of Guide to Medical Officers, 2008), which shall stand rounded off to 50% from the next date of discharge. 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 : 05 July, 2022  
Ukt/-