

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 88 of 2023**Wednesday, this the 5th day of July, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**
“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”No. 1442188N Ex. Hav. Om Prakash, S/o Late Shri Narayan Das,
Village – Koyala Alipur, Post – Baad, District – Mathura, Uttar Pradesh,
PIN-281006.**..... Applicant**Ld. Counsel for the : **Shri Rohitash Kumar Sharma**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ PO, New Delhi-110011.
3. Additional Director General, Personnel Services (PS-4), Integrated Headquarters of Ministry of Defence (Army), DHQ PO, New Delhi-110011.
4. Army AVN Corps Records, PIN-900482, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014.

.....RespondentsLd. Counsel for the : **Shri Arvind Kumar Pandey**, Advocate
Respondents. 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) *Call for the records including RMB proceedings dated 22.06.2021, as well as the findings and opinion as approved by the competent authority based on which the Respondents in most illegal manner rejected the claim of the Applicant in respect of disability “Cervical Compressive Myelopathy C5-6” and has also rejected Disability Pension Claim of the Applicant vide their order dated 29.07.2021 and thereafter quash all such orders.*
- (b) *Direct the Respondents to process the claim of the Applicant in respect of disability “Cervical Compressive Myelopathy C5-6” along with arrears with an interest @18% as expeditiously as possible. .*
- (c) *Further, direct the Respondents to extend the benefit of board banding in respect of Applicant’s disability assessed at 10% to round off to 20% and further round if off to 50% along with the arrears of the disability pension with interest @12% p.a. to be compounded quarterly with exemplary cost from the date of retirement till date of payment. .*
- (d) *Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Indian Army on 26.12.1996 and discharged on 30.06.2021 (AN) in Low Medical Category on fulfilling the terms of engagement under Rule 13(3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Command Hospital (Northern Command), Jhansi on 01.06.2021 assessed his disability ‘**CERVICAL COMPRESSIVE MYELOPATHY C5-6 (S13.4)**’ @20% for life as

aggravated by service, which has been reduced to 10% for life due to unwilling for surgery. The applicant's claim for grant of disability pension was rejected vide letter dated 29.07.2021. The applicant preferred First Appeal which too was rejected vide letter dated 11.04.2022 which was communicated to the applicant vide letter dated 07.05.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that the applicant's disability has been assessed @20% as aggravated by service which has been reduced to 10% due to unwilling for surgery. The degree of disablement of cannot be reduced on the ground of unwillingness certificate given for surgery by the applicant. 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 since the disability qualifying for disability pension with duration of the applicant has been reduced to @10% for life by the RMB on the ground of unwilling for surgery by the applicant, hence in terms of Regulations 53 and 81 of the Pension Regulations for the Army, 2008 (Part-I) the applicant is not entitled to 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 and we find that the questions which need to be answered are of two folds:-

- (a) Whether the RMB can reduce the degree of disablement on the ground of unwilling for surgery?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. In the instant case the disability has been assessed @ 20% for life by the RMB. At page 8 of the RMB proceedings, in the columns of "Percentage of disablement" the RMB endorsed that "20% (Twenty Percent) (20% - 10% = 10%) (Twenty percent) minus (Ten percent) 10% (Ten Percent)". It was done due to unwilling certificate given by the applicant. We are of the opinion that the degree of disablement cannot be reduced by the RMB on the ground of unwilling for surgery by the applicant. Accordingly, we hold that the assessment degree of disability is @20% for life.

7. 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 January 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.”

8. 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.

9. As such, in view of the decision of Hon'ble Supreme Court in the case of ***Union of India and Ors vs Ram Avtar & ors (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 element of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

10. In view of the above, the **Original Application No. 88 of 2023** deserves to be allowed, hence **allowed**. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant 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 from the next date of his discharge. The respondents are directed to grant disability element to the applicant

@20% for life which would stand rounded off to 50% for life from the next date of his discharge. 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

11. No order as to costs.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 05 July, 2023

AKD/-