

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 925 of 2022****Wednesday, this the 12th day of July, 2023****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Vice Admiral Atul Kumar Jain, Member (A)**

No. JC-221926W, Ex Sub Maha Ram
 S/o Late Har Dayal
 R/o Gosarpur, Post Office – Mohamadabad,
 Distt – Farrukhabad (UP) – 209651

..... Applicant

Ld. Counsel for the Applicant: **Shri Virendra Kumar Gupta**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ, Ministry of Defence, South Block, New Delhi-110011.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (Prayagraj) - 211014.
4. The Officer-in-charge, EME Records, PIN- 900453, C/o 56 APO.
5. Branch Manager, Bank of India, Branch – Mohamadabad, Distt – Farrukhabad.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Preeti Mala**,
 Central Govt Counsel

ORDER (Oral)

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(a) To issue suitable orders or directions to the respondents for grant of 50% disability pension in place of 30% from the

date of discharge in pursuance of judgment passed by Hon'ble Apex Court in the matter of Union of India & Others versus Ram Avtar & Others.

(b) To pay the arrears of disability pension alongwith suitable rate of interest as deemed fit, just and proper by this Hon'ble Tribunal.”

2. Briefly stated facts of the case are that the applicant was enrolled in Indian Army on 13.03.1969 and was discharged from service with effect from 31.03.1997 (AN) in low medical category. The Release Medical Board assessed his disability @ 30% for life and applicant is in receipt of 30% disability element of pension from the date of discharge from service. However, applicant has not been granted benefit of rounding off to 50% as per Govt. of India, Ministry of Defence letter dated 31.01.2001. Being aggrieved, the applicant has filed present Original Application for grant of benefit of rounding of disability pension from 30% to 50% from the date of discharge from service.

3. Learned counsel for the applicant argued that since the applicant is already in receipt of 30% disability element for life, therefore, in view of the Hon'ble Apex 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), and Govt. of India, Ministry of Defence letter dated 31.01.2001, the applicant is also entitled to benefit of rounding off of disability element @ 50% for life.

4. No counter affidavit has been filed in the case. Learned counsel for the respondents conceded receipt of 30% disability pension by the applicant but contended that the applicant is not entitled to the benefit of rounding off of disability pension from the date of discharge from service, however, he is entitled to the benefit of rounding off from 30% to 50% for life w.e.f. 01.01.2016 as intimated to the applicant vide EME Records letter dated 09.10.2021 attached alongwith Original Application.

5. Heard learned counsel for the parties and perused the material placed on record.

6. The law on the point of rounding off of disability pension is no more RES INTEGRA in view of the 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) wherein the Hon'ble Apex Court has 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 invalided 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."*

7. In the instant case, there is no dispute that applicant is in receipt of 30% disability element for life as this fact has been accepted by the respondents. In view of the settled law on this matter, we are of the considered opinion that the applicant is entitled to the benefit of rounding off to 50% for life from the date of discharge.

8. However, 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. Accordingly, applicant is entitled to the benefit of rounding off from 01.01.2016 only.

9. In view of the above, the Original Application is allowed. The applicant is entitled to the benefit of rounding off of disability element from 30% for life to 50% for life from the date of discharge. However, as per PCDA (P), Allahabad Circular No. 596 dated 09.02.2018, arrears of benefit of rounding off are applicable from 01.01.2016 only. Hence, arrears of benefit of rounding off @ 50% for life will be paid from 01.01.2016 only. The respondents are 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 actual payment.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 12th July, 2023
SB