

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 1305 of 2023**Tuesday, this the 02nd day of July, 2024**“Hon’ble Mr. Justice Anil Kumar, Member (J)”**
“Hon’ble Lt. Gen. Anil Puri, Member (A)”

Ex. L/Nk. Sudhir Kumar (No. 15174510-X), Father’s Name : Shri Om Prakash, Permanent residing at House No. G-320, Village – Kashiram Nagar Moradabad Kalibadi Mandir, District Moradabad, Uttar Pradesh-244004.

..... Applicant

Ld. Counsel for the Applicant : **Shri Ved Prakash**, Advocate.
Shri Devendra Kumar, Advocate
Shri Vinay Pandey, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), New Delhi-110011.
3. Senior Record Officer, The Artillery Records, PIN-908802, C/o 56 APO.
4. PCDA (P), Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Adesh Kumar Gupta**, Advocate
Central Govt. Standing Counsel

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, 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) *Quash the Impugned Order No. 15174510X/Ld. Counsel/24/NE-5 (C) dated 15.09.2022.*
- (b) *Direct respondents to grant Disability Element of Pension to the Applicant duly rounded off to 50% w.e.f. his date of discharge i.e. 01.03.2022.*
- (c) *Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of retirement with all the consequential benefits.*
- (d) *Any other relief which the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against respondents.*

2. Briefly stated, applicant was enrolled in the Regiment of Artillery of Indian Army on 03.02.2005 and discharged on 28.02.2022 (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 170 Military Hospital, PIN-900170, C/o 56 APO on 29.10.2021 assessed his disability ‘**PIVD C5, C6 (M-51.0)**’ @20% for life as **aggravated by service**, which has been reduced to 10% for life due to refusal/unwilling for surgery. The applicant’s claim for grant of disability pension was rejected vide letter dated 25.01.2022. The applicant preferred Legal Notice-cum-Representation/Appeal dated 01.07.2022 which too was rejected vide

letter dated 15.09.2022. 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 refusal/unwilling for surgery. The degree of disablement of cannot be reduced on the ground of refusal/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 refusal/unwilling for surgery by the applicant, hence in terms of Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that *"An individual released/retired/ discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more"* 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 refusal/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”* and *“Composite assessment for all disabilities (Max 100%) with duration”* the RMB endorsed that *“20% (Twenty Percent)”* and *“20% (Twenty Percent) for life”* respectively whereas in columns *“Disability Percentage Qualifying for Disability Pension with duration”* and *“Net Assessment Qualifying for Disability Pension (Max 100%) with duration”* the RMB endorsed that *“10% (Ten Percent for life) (10% reduced due to refusal for surgery)”* and *“10% (Ten Percent) for life”* respectively. The degree of disability was done due to refusal/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 refusal/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/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/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. 1305 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.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 02 July, 2024

AKD/-