

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1 (E. Court)

O.A. No. 66 of 2020 with M.A. No. 915 of 2019

Ex Sub Maj Santosh Pal Singh
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>02.03.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Heard Shri KK Misra, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents.</p> <p style="text-align: center;"><u>M.A. No. 915 of 2019</u></p> <p>2. The Original Application has been filed with delay of 11 years, 03 months and 16 days.</p> <p>3. Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.</p> <p>4. Per contra, learned counsel for the respondents submits that explanation of delay offered by the applicant is not sufficient as it is not on day to day basis.</p> <p>5. Considering that in pensionary matters bar of limitation is not applicable and grounds shown for delay are genuine and sufficient, delay deserves to be condoned.</p> <p>6. Accordingly, delay is condoned.</p> <p>7. The O.A. has already been admitted and registered vide order dated 14.01.2020.</p> <p style="text-align: center;"><u>O.A. No. 66 of 2020</u></p> <p>8. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-</p> <p style="padding-left: 40px;">“(a) to quash Records Garhwal Rifles Lance down letter No. JC-528249/DP dt 02 Feb 2017 (Annexure A-2) to OA).</p> <p style="padding-left: 40px;">(b) to direct the respondents to round of 30% disability pension</p>

already granted to the applicant to 50%.

(c) to direct the respondents to pay arrears of the difference arising out of this rounding off from the date of its having been granted i.e. w.e.f. the date of his discharge from the service i.e. 01 Feb 2008, with interest as per his entitlement.

(d) Any other relief which Hon'ble Court may think just and proper may be granted in favour of the applicant.

(e) Cost of the case may be allowed.

9. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 04.03.1976 and after having served for more than 31 years, he was discharged from service in low medical category 'S1H2(P)A1P1E1' on 01.02.2008. Prior to discharge from service, applicant was brought before Release Medical Board (RMB) which assessed the applicant to be suffering from '**PRIMARY HYPERTENSION**' @ 40% for life aggravated by military service. Applicant is in receipt of 40% disability element vide Corrigendum. P.P.O. No. DE/CORR/017509/2010 dated 24.06.2010. Applicant represented his case for rounding off disability element which was rejected vide order dated 02.02.2017. It is in this prospective that this OA has been filed.

4. Learned counsel for the applicant pleaded that applicant is already in receipt of disability element @ 40% for life and submitted that present disability element be rounded off to 50% for life in terms of ***Union of India vs. Ram Avtar & Others.***

5. On the other hand, learned counsel for the respondents contended that rounding off of disability element is applicable to personnel who have been invalided out of service. Since applicant was discharged from service, he is not entitled to grant of rounding off of disability element. He pleaded the O.A. to be dismissed.

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

7. We take note of the judgment delivered by the Hon'ble Supreme Court in the case of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014) which lays down rounding off provisions to the personnel who have either been invalided out of discharged from service. Therefore, in view of the aforesaid judgment, the applicant is held entitled to rounding off of disability element w.e.f. 01.01.2016 in accordance with rules on the subject.

8. As a result of foregoing, the O.A. is **allowed**. The impugned order dated 02.02.2017 is set aside.

9. Since the applicant has filed this O.A. on 18.11.2019, he is entitled to

get the aforesaid rounding off benefits from three years preceding the date of filing of the present O.A.

10. In view of the above, respondents are directed to grant rounding off of disability element to applicant w.e.f 18.11.2016 along with arrears within three months from today.

11. Default will invite interest @ 8% p.a.

12. No order as to costs.

13. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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