

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 802 of 2021

Monday, this the 21st day of March, 2022

**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)"**

IC-44169P Col Rajiv Kacker (Retd) S/o Sri Som Prakash Kacker, R/o B-1607 Indira Nagar, Lucknow (UP).

..... Applicant

Ld. Counsel for the : **Shri Anand Yadav**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Adjutant General's Branch, Integrated Headquarter of Ministry of Defence (Army), 'M' Block, Room No 100, Brassey Avenue, Church Road, New Delhi-110001.
4. Additional Directorate General of Personal Services, Adjutant General's Branch/PS-4 (Imp-II), Integrated Headquarter of Ministry of Defence (Army) Plot No 108 (West), Brassey Avenue, Church Road, New Delhi-110001.
5. Additional Directorate General Personal Services Adjutant General's Branch/PS-4 (Imp-I) Integrated Headquarter of Ministry of Defence (Army), Plot No 108 (West), Brassy Avenue, Church Road, New Delhi-110001.

.....Respondents

Ld. Counsel for the : **Shri Devesh Kumar Mishra**,
Respondents. Central Govt. Counsel

ORDER (Oral)

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

- i. Issue/pass an order or direction of appropriate nature whereby commanding the respondents to produce the record in original and thereafter quash the impugned orders dated 14.09.2018, 17.07.2019 and 30.12.2020 whereby rejecting the claim of the applicant for disability pension annexed as Annexure No A-1 (i) (ii) (iii) respectively with the application.*
- ii. Issue/pass an order or direction of appropriate nature whereby commanding the respondents to grant the disability pension to the applicant forthwith.*
- iii. Allow the application with all consequential benefits with exemplary cost.*

2. Briefly stated facts of the case are that the applicant was commissioned in the Indian Army on 20.12.1986 and superannuated on 30.09.2018 in the rank of Colonel in Low Medical Category S1H2(P)A1P1E1. At the time of retirement from service, the Release Medical Board (RMB) held on 27.03.2018 assessed his disability '**High Frequency Sensorineural Hearing Loss**' @15-19% for life aggravated by military service. The claim of disability element of pension was rejected by respondents vide order dated 14.09.2019 (Annexure A (i)). Thereafter, first and second appeals were also rejected vide orders dated 17.07.2019 and 30.12.2020 respectively. It is in this perspective that the applicant has

preferred the present Original Application for grant of disability element of pension.

3. Learned counsel for the applicant pleaded that at the time of commissioning into the Army, the applicant was found mentally and physically fit for service in the Army and there is no note in the service record that he was suffering from any disease at the time of commission in the Army. The disease of the applicant was contracted during the service (exposure to Arty Gun Firing) hence the RMB has declared the disability as aggravated by military service. He pleaded that various Benches of Armed Forces Tribunal have granted disability element of pension in similar cases, as such the applicant be granted disability element of pension duly rounded off to 50% alongwith arrears.

4. The respondents have not disputed that the medical authority considered the disability '**High Frequency Sensorineural Hearing Loss**' @ 15-19% for life aggravated by military service. However, they have stated that in terms of Para 37 of Pension Regulations for the Army-2008, the applicant's claim has correctly been rejected by PCDA (P), Allahabad because his disability is less than 20% i.e. 15-19%.

5. We have heard the learned counsel for the parties and perused the RMB proceedings. The question before us is

straight and simple i.e. is the applicant eligible for disability element of pension with 15-19% of disability?

6. On careful scrutiny of the RMB, we find that the RMB has conceded that the disability was initially caused w.e.f. 15.09.2010 due to prolonged exposure to loud noise (while posted with Ordnance Factory, Jabalpur), hence the disability is connected with service. We, however, find that though the disability is aggravated by service, the applicant is not eligible for disability element because his disability has been assessed as 15-19% whereas he is eligible for disability element only if his disability percentage is 20% or more.

7. The RMB has assessed disability element @ 15-19% for life aggravated by military service. In this regard para 20 of amendment to Chapter VII of Guide to Medical Officers-2008 (Military Pensions) makes it clear that degree of disablement in case of hearing loss cannot be less than 20%. Therefore, we are of the view that applicant's disability element should be assessed in accordance with rules on the subject.

8. Additionally, the Hon'ble Supreme Court of India in the case of ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014) has also frowned on extending the benefit of rounding off only to persons who have been invalided out of service and denying the same to persons proceeding on normal discharge or to persons proceeding on superannuation. In this case the

Hon'ble Supreme Court has dismissed the appeal of the respondents against the order of extending the benefit of rounding off to persons proceeding on normal discharge and superannuation.

9. In view of the above, 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 Ors***, 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 to 50%.

10. In view of the above the Original Application deserves to be allowed.

11. Accordingly the O.A. is **allowed**. The impugned orders dated 14.09.2018, 17.07.2017 and 30.12.2020 are set aside. The respondents are directed to grant disability element of pension to the applicant, deemed to be 20% for life, which would stand rounded off to 50% for life from the next date of applicant's superannuation i.e. 01.10.2018. However, due to law of limitations as held in ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445, the applicant shall be entitled to disability element of pension and its rounding off from three preceding years of filing of present O.A. which was filed on

06.12.2021. 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. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 8% on the amount accrued from due date till the date of actual payment.

12. No order as to costs.

13. Miscellaneous application(s), pending if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 21.03.2022

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