

Form No. 4

**{See rule 11(1)}**  
**ORDER SHEET**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 522 of 2017

Niyaz Ahmad

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India &amp; Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><b><u>29.11.2018</u></b>  <u>Hon'ble Mr. Justice SVS Rathore, Member (J)</u>  <u>Hon'ble Air Marshal BBP Sinha, Member (A)</u></p> <p>Judgment pronounced.  O. A. No. 522 of 2017 is <b>allowed</b>.  For orders, see our judgment and order of date passed on separate sheets.  Misc. Applications, pending if any, shall be treated as disposed of accordingly.</p> <p>(Air Marshal BBP Sinha)  Member (A)</p> <p>(Justice SVS Rathore)  Member (J)</p> <p>gsr</p>

**RESERVED**  
**Court No.1**

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

**Original Application No. 522 of 2017**

Thursday, this the 29<sup>th</sup> day of November 2018

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

No. 2873129K Ex Hony Nb Sub Niyaz Ahmad, son of Shri Muhamad Khalil, resident of village-Bahadurganj, Post-Bahadurganj, District-Ghazipur, U.P., PIN-275201.

..... Applicant

Ld. Counsel for the: **Shri V.P. Pandey**, Advocate  
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army staff, Integrated Head Quarter, Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer Incharge, Records, The Rajputana Rifles, Delhi-10.
4. Principal Controller of Defence Account (P), Draupadi Ghat, Allahabad-211014.

..... Respondents

Ld. Counsel for the  
Respondents

: **Mrs Anju Singh**  
Central Govt Counsel.

**ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. 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:-

- (a) *To set aside/quash the order dated 12 May, 2003 and 30 June, 2005 as contained in Annexure A-1 and A-2 to this original application.*
- (b) *Issue/pass an order or direction directing the respondents to grant disability pension to the applicant w.e.f. 31 October, 2002 i.e. from the date of release/discharge till life.*
- (c) *Issue/pass an order or direction directing the respondents to round off the disability pension from 20% to 50%.*
- (d) *Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- (e) *Cost of the appeal be awarded to the applicant.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 07.10.1978 and discharged from service after rendering 24 years and 25 days of service on 31.10.2002 in low medical category (S1H1A2(Permt)P1E1) under Rule 13 (3) III (i) of the Army Rules 1954. The Release Medical Board (RMB) of the applicant opined his disability “CRUSH INJURY (RT) INDEX FINGER TERMINAL PHALANX (OPTD)” to be attributable to military service with disability @ 6-10%. Thereafter the applicant is in receipt of service pension, however he has been denied disability pension due to disability element being less than 20%.

3. Ld. Counsel for the applicant submitted that since the applicant suffered injury “CRUSH INJURY (RT) INDEX FINGER TERMINAL PHALANX (OPTD)” while performing military duty

and the RMB has opined the disability to be attributable to military service, therefore the applicant is entitled to disability pension. Ld. Counsel for the applicant further submitted that claim for grant of disability pension was rejected vide order dated 12.05.2003 on the ground of disability element being less than 20%. Thereafter the applicant preferred first appeal to the appellate authority against rejection of disability pension claim which is still pending. Ld. Counsel for the applicant has relied upon the judgment of Hon'ble Apex Court in the case of **Sukhwinder Singh vs Union of India & Ors**, (2014) 4 SCT 163 (SC) and pleaded that the applicant is entitled to grant of disability pension and its rounding off.

4. Rebutting arguments of Ld. Counsel for the applicant, Ld. Counsel for the respondents submitted that the disability pension claim of the applicant was rightly rejected because the RMB has accepted the degree of disablement at 6 to 10% for two years which is less than 20% and therefore the disability pension is inadmissible.

5. We have heard Ld. 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 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 10<sup>th</sup> December 2014) wherein the Hon'ble Apex Court nodded in disapproval of 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."*

7. In the instant case, there is no dispute that the applicant's disability is 6-10% for two years attributable to military service. This fact has also been accepted by the respondents.

Thus in view of the settled law on this matter we are of the considered opinion that the applicant is entitled the benefit of rounding off.

8. In view of the above, the Original Application deserves to be allowed hence **allowed**. The impugned orders are set aside. The respondents are directed to grant disability element of pension to the applicant @ 50% for two years i.e. 01.11.2002 to 01.11.2004. The respondents are also directed to hold applicant's Re-survey Medical Board (RSMB). Further entitlement of disability element of pension shall be subject to outcome of the RSMB. The entire exercise shall be completed by the respondents within four months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 9% to the applicant on the amount accrued till the date of actual payment. cv

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore)**  
**Member (J)**

Dated : November, 2018  
gsr