

Court No. 1 (E-Court)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 570 of 2022

Friday, this the 04th day of November, 2022

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

Ex. Hony. Sub. Sanjay Pandit, House No. 532G/76,
Maharibagh, Telibagh, Lucknow.

..... Applicant

Ld. Counsel for the: **Col. A.K. Srivastava (Retd)**, Advocate.
Applicant

Versus

1. The Secretary, Govt. of India (MoD), South Block, DHQ
PO, New Delhi-110001.
2. The Chief of Army Staff, Integrated HQ of MOD (Army),
South Block, DHQ PO-New Delhi-110001.
3. The OIC Records, AMC Records, Lucknow.
4. Pr. Controller of Defence Accounts, PCDA(P), Draupadi
Ghat, Allahabad.

.....**Respondents**

Ld. Counsel for the : **Ms. Appoli Srivastava**, Advocate
Respondents. Central Govt. Counsel

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, 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) *Issue/pass an order or direction of appropriate nature to summon and quash/set aside respondent’s impugned order leading to denial of his entitled disability element of pension, duly rounded off to 50% due to disability “Acromioclavicular Dislocation (RT)”.*
- (b) *Issue/pass an order or direction of appropriate nature to the respondents to set aside AMC Records letter dated 20/02/2022 RMB dated 22/03/2021 rejecting applicant’s disability element of pension claim for his persisting 20% by reducing it to 14% illegally, without application of mind and against natural justice.*
- (c) *Issue/Pass an order or direction of appropriate to the respondents to set aside the arbitrary and mechanical calculation based on which respondents reduced applicant’s 20% disability of Acromioclavicular Dislocation (RT) to 14% since applicant had refused to undergo surgery once concerned doctor had informed him that chances of success was merely 30% and thereby denying his entitled disability element of pension duly rounded off to 50% w.e.f. 01/11/2021.*

- (d) *Issue/Pass any other or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (e) *Allow this application with costs.*

2. Briefly stated, applicant was enrolled in the Indian Army on 13.10.1995 and discharged on 01.11.2021 (F/N) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Base Hospital, Lucknow on 22.03.2021 assessed his disability '**TYPE-III ACROMIOCLAVICULAR JOINT DISLOCATION (RT)**' @20% for life but it was reduced to 14% for life due to unwilling for surgery by the applicant, and opined the disability to be **attributable to** Military Service. The applicant's claim for grant of disability pension was rejected vide letter dated 20.01.2022. The applicant preferred First Appeal dated 19.03.2022 but of no avail. The applicant preferred representation which was replied by the respondents vide letter dated 28.02.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that initially the percentage of the disability was granted as 20% for life, **attributable to** Military Service, however, his percentage of disability was reduced to 14% as the applicant had submitted unwillingness for surgery. 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 the disability i.e. **'TYPE-III ACROMIOCLAVICULAR JOINT DISLOCATION (RT)'** has been assessed as 20% for life and disability was considered as attributable to military service but disability qualifying element for disability pension was assessed @14% for life (6% deducted from total percentage of disability as the applicant had submitted unwillingness for surgery). As per Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part – I), the disability should be either attributable to or aggravated by the Military Service and minimum assessment for the disability is

mandatorily required to be 20% or more. Since applicant's disability was reduced to 14% for life, applicant is not entitled 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.

6. Perusal of record reveals that the RMB held before discharge originally assessed the disability of the applicant as 20% for life and attributable to Military Service. The net disability assessment for grant of disability pension was reduced from 20% to 14% for life at a subsequent stage by the respondents on the grounds of unwillingness for surgery.

7. Considering all aspect of the case, we are of the opinion that joint operation has not reached a level of validating and trust where success can be guaranteed for 100% recovery. On the contrary there is a lot of reservations on undertaking joint operation. Hence, the unwillingness of the applicant for surgery (joint operation) in our opinion is not a valid ground for reducing

his disability percentage from 20% to 14% specially when one considers the complications which are associated with joint operation. As such, we hold that the percentage of disability of the applicant is 20% for life.

8. 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 December 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 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."*

9. Additionally, 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.

10. 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*** as well as Government of India, Ministry of Defence letter No. 17(01)/2017(01)/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.

12. In view of the above, the **Original Application No. 570 of 2022** 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% as attributable to Military Service. 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

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 04 November, 2022

AKD/-