

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

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

**Original Application No. 20 of 2017**

Monday, this the 08<sup>th</sup> day of October 2018

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

No. 13971126A Rank Ex Nk Sanjai Prakash Agnihotri s/o late Om Prakash Agnihotri, R/O Preet Sadan, 64, Panchvati, Kanpur City, U.P.-208025.

..... Applicant

Ld. Counsel for the Applicant: **Shri J.N. Mishra**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Integrated Services Headquarters of Ministry of Defence (Army), New Delhi.
3. Integrated Headquarters of Ministry of Defence (Army), Adjutant General's Branch, Addl Director General Pers Services, Room No 18, Plot No 108 (West) Brassy Avenue, Church Road, New Delhi-110001.
4. The Record Officer for OIC Records, Sena Chikitsa Corps Abhilekh (Army), AMC Records, Lucknow-226001.
5. The PCDA (P), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**  
Respondents 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 quash and set-aside the orders dated 11.07.2003 and 03.10.2003 (Annexure No 1 and Annexure No 2) which is informed to applicant by a letter dated 27.02.2015 to the Original Application.*
- (b) *To issue an order or direction in suitable nature directing the respondent department to release the disability pension with all consequential benefits with interest in favour of the applicant within stipulated period as to be specified by this Hon’ble Tribunal.*
- (c) *To pass such any other order/direction which this Hon’ble Court may deem fit and proper under the facts and circumstances of the case.*
- (d) *To allow this original application with costs.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 04.12.1986 and discharged from service at his own request on compassionate grounds on 01.03.2003 (FN) after rendering 16 years, 02 months and 27 days of service in low medical category for his disabilities (i) Low Backache (PIVD L4-5) and (ii) Sciatica (Rt). Prior to discharge from service on own request, the applicant was brought before duly constituted Release Medical Board (RMB) held on 21.10.2002 at 158 Base Hospital which assessed his disability as not attributable to military service but aggravated by stress and strain of military service and assessed the

disability @ 11-14% for life. Disability pension claim preferred by the applicant on 11.07.2003 was rejected vide order dated 16.09.2003.

3. Ld. Counsel for the applicant submitted that the applicant was first diagnosed to be suffering from Low Backache (PIVD-45) and Sciatica (Rt) during Jul 1993. In the later years he was admitted on many occasions to various hospitals on account of suffering from above diseases, provided treatment and was assessed 40% composite disability when applicant's re-categorization Medical Board was held on 08.01.1998 at Military Hospital, Pulgaon but the RMB downgraded his disability percentage to 11-14% for life. He also brought on record copy of medical certificate issued by Chief Medical Officer, Kanpur City who assessed applicant's disability @ 50%. Further, relying upon the Hon'ble Apex Court judgment in the case of **Ram Avtar vs Union of India & Ors**, Civil Appeal No 418 of 2012 decided on 10.12.2014, Ld. Counsel for the applicant pleaded that the applicant is entitled to the benefit of rounding off of his disability element from 11-14% for life to 50% for life. Ld. Counsel for the applicant has also relied upon the judgment of O.A. No. 1019 of 2013, **Wg Cdr GBS Kang vs. UOI & Ors** rendered by Armed Forces Tribunal, Chandigarh in which the applicant proceeded on premature retirement was granted rounding off of disability pension. Ld. Counsel further placed reliance to judgment and order of Armed Forces Tribunal, Regional

Bench, Lucknow pronounced on 30.10.2015 in T.A. No. 432 of 2010, **Bijendra Singh vs. UOI & Ors.** In rejoinder affidavit Ld. Counsel for the applicant has re-emphasised on Hon'ble Apex Court judgment in the case of **Union of India & Ors vs. Ram Avtar** (supra) which stipulates rounding off of disability pension to the tune of 50% for normal discharge also and Govt Notification dated 29.09.2009 according to which it has been made clear that persons proceeding on premature retirement shall also be granted disability pension with effect from 01.01.2006.

4. Per contra, Ld. Counsel for the respondents submitted that as per para 7 of Appendix 'C' to Integrated Headquarters of MoD (Army) letter dated 20.07.2006 the applicant is not eligible for grant of disability element as he was discharged from service at his own request. He further placed reliance to Rule 173 of Pension Regulations for the Army, 1961 (Part-I) which stipulates that 'unless otherwise specifically provided, a disability pension may be granted to an individual who is invalided out from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20% or over.' Ld. Counsel pleaded that in the instant case the applicant was discharged at his own request and granted disability element @ 11-14% for life, hence the applicant is not entitled to disability pension.

5. We have heard Ld. Counsel for the both the parties and perused the material placed on record. The issue to be

decided before us is twofold i.e. firstly is the applicant entitled to disability pension despite being a case of discharge on own request and secondly if otherwise eligible for disability pension is he entitled to disability element of disability pension with a disability of 11-14%?

6. As far as the first issue is concerned i.e. is the applicant eligible for disability pension despite being a case of discharge on own request, we are of the considered opinion that the case is no more RES INTEGRA and as per the existing Govt policy (Govt of India, Ministry of Defence letter dated 29.09.2009) the applicant, if otherwise eligible, is entitled to disability pension w.e.f. 01.01.2006.

7. As far as the second issue is concerned i.e. is the applicant entitled to disability element of disability pension with 11-14% disability for life? We have given our anxious thoughts on this issue. Before taking a final decision on the issue we consider it important to bring the irrefutable facts on this matter on record as emerging out of the RMB of the applicant. The irrefutable facts are as follows:-

(a) That the applicant's disability i.e. 'Low Backache' and 'Sciatica (Rt)' has been considered aggravated by the RMB due to stress and strain of service.

(b) That the individual percentage of these two disabilities as per copy of RMB submitted by applicant is as follows:-

(i) Low Backache-11-14%	}	Composite Assessment 15-19%
(ii) Sciatica (Rt)-6-9%		

However we find that these percentages have been changed in the following manner:-

(i) Low Backache-11-14%	}	Composite Assessment <del>15-19%</del> 11-14%
(ii) Sciatica (Rt)- <del>6-9%</del>		
	(Signature)	(Signature)

8. Thus it is clear by perusal of RMB that the two disabilities of the applicant are aggravated by military service and the corrected disability after reduction is 11-14% for life.

9. Thus in light of the facts emerging out of RMB and the law settled by the Hon'ble Supreme Court for service personnel proceeding on normal discharge, we are of the considered opinion that the applicant is eligible for disability pension w.e.f. 01.01.2006. He is also eligible for the benefit of rounding off as per the law emerging out in the judgment of **Ram Avtar vs Union of India & Ors** (supra). The relevant portion of the aforesaid judgment is as given 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.*

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*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."*

10. As a result of foregoing discussion, the O.A. is **allowed**.

The applicant is entitled to disability element of disability pension @ 11-14% for life rounded off to 50% for life w.e.f. 01.01.2006. However considering the law of limitations, he shall be entitled to arrears of disability element of disability pension three years prior to filing this O.A. The date of filing this O.A. is 01.03.2016. The impugned orders dated 11.07.2003 and 03.10.2003 are set aside and the respondents are 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 @ 9% per annum.

No order as to costs.

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

Dated : October, 2018  
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**(Justice SVS Rathore)**  
**Member (J)**