

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

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

**Original Application No 228 of 2018**

Wednesday, this the 24<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. 68975141 Ex Hav (HNS) Firen Bahadur Singh, S/O Sri Udit Narayan Singh, R/O 34, Bahadurganj, Tiloi, Raebareilly.

..... Applicant

Ld. Counsel for the: **Shri B.B. Tripathi**, Advocate  
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014.
3. The Senior Records officer, AOC Records, Secunderabad.

..... Respondents

Ld. Counsel for the :**Shri R.C. Shukla**  
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:-

- (i) *To quash the order dated 28.10.2017 passed by the respondent No 3 with all benefits of service.*
- (ii) *Issue an order, direction and command to the respondents to pay the disability pension to the applicant @ 50% instead of 20% by issuing revised PPO and also to pay the arrears thereof along with interest @ 12% per annum pursuant to orders dated 18.04.2016 and 10.06.2016 issued by the respondents themselves in compliance of judgment and order of Hon’ble Supreme Court in the case of Union of India & Others vs. Ram Avtar, without reference to the order, contained in Annexure No 1, impugned in the Application, with all consequential benefits.*
- (iii) *Issue such other order/direction which may be deemed just and proper in the circumstances of the case.*
- (iv) *Allow the original application with cost against the respondents in view of the facts and circumstances, legal provisions and grounds raised in the application.*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 30.04.1968 and discharged from service after rendering 22 years, 09 months and 01 day of service on 31.01.1991 (AN). Prior to discharge from service the applicant was brought before Release Medical Board (RMB) held at MH, Jalandhar on 30.10.1990 which opined the applicant to be placed in low medical category CEE (permt) due to

disability '**LOW BACK ACHE AND RIGHT SIDED SCIATICA 724 C&E**'. His disability was assessed @ 20% for five years aggravated by military service. Disability pension claim was submitted to PCDA (P), Allahabad which adjudicated the claim and reduced the disability element @ 20% for two years i.e. from 01.02.1991 to 30.10.1992. Accordingly, the PPO to this effect was issued on 27.06.1991 and the applicant was granted 20% disability element for two years.

3. Ld. Counsel for the applicant submitted that the applicant is entitled to the benefit of rounding off of disability pension from 20% to 50% in terms of ***Union of India & Ors vs Ram Avtar & Ors*** (Civil Appeal No 418 of 2012 decided on 10.12.2014).

4. On the other hand Ld. Counsel for the respondents conceded that the applicant was in receipt of 20% disability element for two years i.e. from 01.02.1991 to 30.10.1992. Since the applicant was granted disability element for two years, the applicant was required to be brought before Re-Survey Medical Board (RSMB) to determine his eligibility for further continuation of payment of disability element. On 23.05.1992, Record Office, Army Ordnance Corps informed the applicant to provide certain information for conduct of RSMB but the

same was not provided by the applicant. Since the requisite information was not provided by the applicant, RSMB could not be conducted. The payment of disability element granted earlier was also stopped w.e.f. 31.10.1992. Thereafter the Record Office made protracted correspondence on the subject but did not receive any response from the applicant. The Record Office also wrote to Zila Sainik Board, Rai Bareilly in this regard to find out whereabouts of the applicant who did not turn up despite issuing several reminders. On 05.10.2016 the applicant after elapse of 24 years approached the authorities concerned for rounding off of disability element from 20% to 50% which was suitably replied on 28.10.2017. Ld. Counsel for the respondents further averred that as per available records the applicant is not in receipt of disability element. Since his RSMB could not be conducted in the absence of certain information, eligibility for further continuation of disability element with effect from 31.10.1992 onwards could not be ascertained. The Ld. Counsel further contended that as per prevailing rules on the subject, the benefit of rounding off is applicable w.e.f. 01.01.1996. In addition rounding off is applicable to those personnel whose services were cut short and invalidated out prior to completion of terms of engagement. Since the applicant

was discharged from service on 31.01.1991, he is not eligible for rounding off of disability element.

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

6. After hearing both the parties, the short question before us is two fold, i.e. Firstly, is the applicant eligible for the benefit of rounding off for the period he received disability element i.e. 01.02.1991 to 30.10.1992? Secondly is he eligible for disability element now?

7. As far as the first question is concerned, we are clear that the applicant is not eligible for the benefit of rounding off because his disability element was stopped before the year 1996 when the provision of rounding off came into effect. As far as the second question is concerned, it is clear that applicant did not make any meaningful effort to undergo RSMB as required by Rules for further entitlement to his disability after stoppage of his disability element in 1992. It is not his case that he wanted to undergo RSMB and had made efforts for the same but the respondents denied him the opportunity, therefore the applicant himself is responsible for discontinuation of his disability element. Thus his eligibility to future disability element of disability pension will be subject to the outcome of a fresh RSMB.

8. In view of the above, the O.A. is **disposed of**. The respondents are directed to carry out Re-survey Medical Board (RSMB) for re-assessing the present medical condition of the applicant. Future entitlement of disability element shall be subject to the outcome of RSMB.

9. The respondents are further directed to give effect to this order within a period of four months from the date of this order.

No order as to costs.

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

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

Dated :           October, 2018  
gsr