

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 137 of 2021**Wednesday, this the 06th day of October, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**No. 1065412L Ex. Swr. Himmat Singh, S/o Sri Ram Bharosi, R/ o
Village Jautana, PO Fatehpur Sikri, District Agra (UP).

..... Applicant

Ld. Counsel for the : **Shri K.K. Misra**, Advocate.
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Army HQ, New Delhi.
3. Officer-in-Charge, Armoured Corps, Records, Ahmednagar Camp, PIN-900476.
4. PCDA (Pension), Allahabad.

.....**Respondents**Ld. Counsel for the : **Shri Arun Kumar Sahu**, 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 :-

- (i) To direct the respondents to take the assessment of Re-Survey Medical Board held during 1998, as final and for life.*
- (ii) thereafter, grant disability pension to the applicant from the date it was stopped by them, i.e. from 26 March, 2006.*
- (iii) direct the respondents to round of this disability percentage to 50% as per the policy on the subject and pay the arrears of pension from the date as applicable with interest.*
- (iv) Any other relief which Hon'ble Court may think just and proper may be granted in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Armoured Corps of Indian Army on 10.07.1980 and was discharged on 15.01.1993 being placed in Medical Category lower than AYE and not upto the prescribed military physical standard under Rule 13 (3) Item III (v) of the Army Rules, 1954 read in conjunction with Sub Rule 2(A) of the Army Rules after rendering 12 years and 24 days of service. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Jodhpur on 03.06.1997 assessed his disability '**BRONCHIAL ASTHMA V-67**' @20% for two years and opined the disability to be **aggravated by military service**. Accordingly, the applicant was granted service element for life and disability element for two years from 16.01.1993 to 02.06.1997 vide PPO dated 21.06.1993. The Re-Survey Medical Board held at Military Hospital at Agra on 09.09.1997, wherein his disability was assessed at 20% for three years. Accordingly applicant was

granted disability element for three years vide P.P.O. dated 12.09.2001. Again Re-Survey Medical Board held on in March, 2001 assessed his disability @20% for five years. Accordingly, the applicant was granted disability element for five years i.e. till March, 2006. Thereafter, disability element of the applicant has been stopped. The applicant preferred representations dated 13.11.2017, 25.02.2018 and 15.07.2018 but of no avail. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that as per Policy of Government of India, Ministry of Defence has issued letter No. 1(2)/97/D(Pen-C) dated 07.02.2001 disability of the applicant ought to have been declared for life and there was no question of holding subsequent Re-Survey Medical Board. He pleaded that various Benches of Armed Forces Tribunal have granted element of disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof, as applicant is also entitled to disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that as per directions of the IHQ of MOD (Army), vide letter No. 76090/DGMS-5(A) dated 05.02.2002 that temporary disability personnel were required to brought before one time Re-Assessment Medical Board for final disposal prior to 30.09.2002. Therefore, all old medical documents of the applicant were

forwarded to Military Hospital, Agra Cantt. (UP) for carrying out one time Re-Survey Medical Board by the Armoured Corps Records vide letter No. 10654121/RA/Pen dated 04.09.2002. However, in spite of repeated requests/reminders, the applicant did not report to the Military Hospital, Agra for carrying out his one-time Re-Survey Medical Board. Subsequently, Military Hospital, Agra Cantt. Returned all medical documents to Armoured Corps Record vide vide letter No. 314/RAMB/A41293 dated 05.04.2004. 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 records and we find that the questions which need to be answered are of two folds:-

- (a) Whether the applicant is required to appear before Re-Survey Medical Board for his re-assessment of his disability percentage?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. As per policy of Government of India, Ministry of Defence, New Delhi has issued letter No. 1(2)/97/D(Pen-C) dated 07.02.2001 of which para 7 is as under :-

“7. Reassessment of Disability : There will be no periodical review by the Resurvey Medical Board for re-assessment of disabilities. In cases of disabilities adjudicated as being of a

permanent nature, the decision once arrived at will be final and for life unless the individual himself requests for a review. In cases of disabilities which are not of a permanent nature, there will be only one review of the percentage by a Reassessment Medical Board to be carried out later, within a specified time frame. The percentage of disability assessment/recommended by the Reassessment Medical Board will be final and for life unless the individual himself asks for a review. The re3view will be carried out by Review Medical constituted by DGAFMS. The percentage of disability assessed by the Review Medical Board will be final.”

7. In the instant case the Re-Survey Medical Board was held in March, 2001 and assessed the disability of the applicant @20% for five years i.e. till 2006. The respondents ought to have held Re-Survey Medical Board and if the same was not done, the applicant cannot be blamed for the same. In view of above Policy letter the disability of the applicant shall be presumed @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. It is also observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon’ble Apex Court has observed:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

10. As such, in view of the decision of Hon’ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability pension @ 20% for life to be rounded off to 50% for life may be extended to the applicant from three preceding years from the date of filing of the Original Application.

11. In view of the above, the **Original Application No. 137 of 2021** 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 applicant is entitled to get disability element @20% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @20% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 10.07.2019 The respondents are further directed to give effect to

