

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 601 of 2023**Thursday, this the 19<sup>th</sup> day of October, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)  
Hon’ble Lt. Gen. Anil Puri, Member (A)”**

No. 14818855H Ex. Hav. Brajesh Kumar, Son of Shri Kamla Prasad Singh, resident of House NO. Applicant A N 975, Godhehra Devi School, Sankarpuram Colony, Pahariya, Varanasi-221001.

**..... Applicant**

Ld. Counsel for the Applicant : **Shri Manoj Kumar Awasthi**, Advocate  
**Shri Anshuman Srivastava**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), South Block, New Delhi-110010.
2. Chief of the Army Staff, IHQ of MoD (Army), Army HQ, South Block, New Delhi-110010.
3. The Appellate Committee on First Appeal (ACFA), Additional Director General of Personnel Services/PS-4 (Imp-II) AG’s Branch, Integrated HQ of MoD (Army), DHQ – PO, New Delhi-110011.
4. The Officer-in-Charge Records, Record Office, AS Records (South), Bangalore-560007.
5. PCDA (Pension), Draupadi Ghat, Prayagraj.

**.....Respondents**

Ld. Counsel for the Respondents. : **Shri Anurag Mishra**, Advocate  
Central Govt. Counsel  
Assisted by Maj. Danish Faroqui,  
Departmental Representative

**ORDER****“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, 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) *To issue pass an order or direction to quash/set-aside the order no. 14818855H/NS/DP dated 24.08.2021 and Appellate order no. 14818855H/1<sup>st</sup> Appl/DP-II dated 01.02.2022 passed by Respondents No. 3 and 4 annexed as Annexure No. 1 and 2 to this original application.*
- (b) *To issue pass an order or directions to the respondents to grant Disability Element of Disability Pension @28% with effect from date of discharge i.e. 30.04.2021.*
- (c) *To issue pass an order or directions to respondents to grant benefit of Rounding off Disability Element of disability pension @28% to @50% for life to the applicant and pay due arrears including consequential benefits with interest @12% p.a. till final payment is made in light of Hon’ble Apex Court judgments and letter dated 31.01.2001.*
- (d) *Any other relief which the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case is also granted along with cost of the OA.*

2. Briefly stated, applicant was enrolled in the Indian Army on 12.04.1997 and discharged on 30.04.2021 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item III (i) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military

Hospital, Meerut Cantt. on 26.04.2021 assessed his disabilities (i) '**FRACTURE SHAFT OF FEMUR B/L (OPTD) (S-72.3)**' @20% and (ii) '**DYSLIPIDEMIA (E-78.5)**' @10%, **composite disabilities @28% for life** and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 24.08.2021. The applicant preferred First Appeal dated 01.01.2022 which has been forwarded to Dte Gen of Pers Services vide letter dated 01.02.2022 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 at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The diseases/injuries of the applicant were contracted during the service, hence they are attributable to and aggravated by Military Service. 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 composite disabilities of the applicant @28% for life have been regarded as NANA by the RMB, hence as per Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that "*An individual released/retired/*

*discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more”* the applicant is not entitled to disability element of disability pension. He further submitted that while serving with 512 ASC Bn the applicant was met with an accident on 27.03.2011 and diagnosed with disability **“FRACTURE SHAFT FEMUR (B/L) OPTD AND FRACTURE SHAFT OF RADIUS LEFT OPTD”** at Military Hospital, Jodhpur and downgraded to Low Medical Category A3 (T-24) with effect from 23.07.2011. In subsequent review carried out at 165 Military Hospital, he was upgraded to medical category A1 in respect of in respect of disability **“FRACTURE SHAFT OF RADIUS LEFT OPTD”** and continued in Low Medical Category A2 (Permanent) in respect of disability **“FRACTURE SHAFT FEMUT (B/L) OPTD”** with effect from 05.07.2014. 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 and we

find that the questions which need to be answered are of two folds:-

- (a) Whether the disabilities of the applicant are attributable to or aggravated by Military Service?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. On perusal of RMB proceedings we find that there is ambiguity in the RMB report with regard to first disability as on one hand at page 7 the RMB against the Columns of '*Attributable to service*' and '*Aggravated by service*' RMB has endorsed as '**No**' and on the other hand in the Column 'detailed justification' RMB has endorsed that "***Disability conceded attributable to military service vide injury report dated 17 Nov 2011***". Further, on page 7(A) of the RMB proceedings, the RMB has stated that '**FRACTURE SHAFT OF FEMUR B/L (OPTD) (S-72.3) : Disability conceded attributable to military service vide injury report dated 17 Nov 2011**'. We are therefore of the considered opinion that the benefit of doubt in these circumstances should be given to the applicant and the first disability of the applicant should be considered as attributable to military service as has been justified by the RMB.

7. However, with regard to second disability i.e. '**DYSLIPIDEMIA (E-78.5)**' we are agree with the opinion of the

RMB as NANA as it is a life style disease and not related to military service.

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 10<sup>th</sup> 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 (supra)*** 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.

11. In view of the above, the **Original Application No. 601 of 2023** deserves to be partly allowed, hence **partly allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The first disability of the applicant is held 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.

12. No order as to costs.

13. Maj. Danish Farooqui, Departmental Representative for the respondents orally submitted to grant Leave to Appeal against the above order which we have considered and no point of law of general public importance being involved in the case the plea is rejected.

(Lt. Gen. Anil Puri)  
Member (A)

(Justice Ravindra Nath Kakkar)  
Member (J)

Dated : 19 October, 2023

AKD/-