

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 979 of 2022**Wednesday, this the 04<sup>th</sup> day of October, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”****“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Ex. AG PO EL (P) Suraj Kumar Verma (No. 214938-Y), Father’s Name : Shri Deena Nath Verma, Permanent residing at Street – Pipara Japati, PO – Belahra, City – Pipara Japti, Tehsil – Bhanpur, Uttar Pradesh-272182.

**..... Applicant**

Ld. Counsel for the Applicant : **Shri Ved Prakash**, Advocate.  
**Shri Devendra Kumar**, Advocate  
**Shri Vinay Pandey**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of Naval Staff, Integrated HQ of MoD (Navy), Through PDPA, New Delhi-110011.
3. Naval Pension Office, C/o INS Tanaji Sion Trombay Roadm Mankhurd, Mumbai-400088.
4. PCDA (N), No. Cooperage Road, Mumbai-400001.

**.....Respondents**

Ld. Counsel for the Respondents. : **Shri Amit Jaiswal**, Advocate  
Central Govt. Counsel

**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) *Quash the Impugned Order No. PEN/600/D/LRDO I : 07/2021/204938Y dated 08.09.2021.*
- (b) *Direct respondents to grant Disability Element of Pension to the applicant duly rounded off to 50% w.e.f. his date of discharge i.e. 01.08.2021.*
- (c) *Direct respondents to pay the due arrears of disability element of pension with interest @12% p.a. from the date of retirement with all the consequential benefits.*
- (d) *Any other relief which the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.*

2. Briefly stated, applicant was enrolled in the Indian Navy on 31.07.2006 and discharged on 31.07.2021 (AN) in Low Medical Category. At the time of discharge from service, the Release Medical Board (RMB) held at INHS Sandhani, Mumbai on 20.07.2021 assessed his disability ‘**APPENDICULAR LUMP (ATTEMPTED EMERGENCY OPEN APPENDICECTOMY ICD NO. K38.1)**’ @20% for life as **attributable to service**, which has been reduced to 10% for life due to refusal to undergo operation/surgery. The applicant’s claim for grant of disability element of disability pension was rejected vide letter dated 08.09.2021. The applicant preferred Legal Notice-cum-Representation/Appeal dated 05.01.2022 through his Counsel which too

was rejected vide letter dated 02.02.2022. 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 Naval service, however, his percentage of disability was reduced to 10% as the applicant had refused to undergo the surgical treatment by submitting unwillingness certificate. 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. '**APPENDICULAR LUMP (ATTEMPTED EMERGENCY OPEN APPENDICECTOMY ICD NO. K38.1)**' has been assessed as 20% for life and disability was considered as attributable to service but disability qualifying element for disability pension was assessed @10% for life (10% reduced from total percentage of disability as the applicant had refused to undergo the surgical treatment and unwillingness certificate). The RMB opined that if applicant would have been operated, his disability would have been cured completely. Accordingly, as per RMB, the applicant's disability was reduced by 50% i.e. 20% to 10%. As per Regulation 101 and 105-B of Navy (Pension) Regulations, 1964 the disability should be either attributable to or aggravated by the Naval Service and minimum assessment for the disability is mandatorily

required to be 20% or more. Since applicant's disability was reduced to 10% 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 and we find that the questions which need to be answered are of two folds:-

- (a) Whether the RMB can reduce the degree of disablement on the ground of refusal to undergo operation and unwillingness certificate for surgery?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

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 Naval Service. The net disability assessment for grant of disability pension was reduced from 20% to 10% for life at a subsequent stage by the respondents on the grounds of refusal to undergo operation and unwillingness certificate submitted for surgery by the applicant.

7. Considering all aspect of the case, we are of the opinion that 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 operation. Hence, the refusal and

unwillingness of the applicant for surgery in our opinion is not a valid ground for reducing his disability percentage from 20% to 10% specially when one considers the complications which are associated with 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 10<sup>th</sup> January 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 invalided 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. 979 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% for life. 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. Ld. Counsel 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.

**(Vice Admiral Atul Kumar Jain)**  
**Member (A)**

**(Justice Ravindra Nath Kakkar)**  
**Member (J)**

Dated : 04 October, 2023

AKD/-