

**Court No. 1 (E-Court)****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 458 of 2022**

Thursday, this the 06<sup>th</sup> day of October, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

JC-379186M Ex. SM & Hony. Capt. Akhilesh Kumar, S/o Late Shr Prayag Narayan, Village & Post – Chhiriya Salempur, District – Jalaun, Uttar Pradesh, PIN-285123.

..... **Applicant**

Ld. Counsel for the : **Shri Rohitash Kumar Sharma**, Advocate  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi-110011.
3. Additional Director General, Personnel Services (PS-4), Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi-110011.
4. The Records Signals, PIN-908770, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014.

.....**Respondents**

Ld. Counsel for the : **Shri Alok Kumar Mishra**, 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 :-

- (a) *Call for the records including the RMB proceedings dated 06.04.2021, as well as the findings and opinion as approved by the competent authority based on which the Respondents in most illegal manner rejected the claim of the Applicant in respect of disability “Compressive Cervical Mylopathy C-4-5” and has also rejected Disability element claim of the applicant vide their order dated 29.09.2021 and thereafter quash all such orders.*
- (b) *Direct the Respondents to process the claim of the Applicant in respect of disability “Compressive Cervical Mylopathy C-4-5” along with arrears with an interest @18% as expeditiously as possible.*
- (c) *Further, direct the Respondents to extend the benefit of broad banding in respect of Applicant’s disability assessed at 10% to round off to 20% and further round it off to 50% along with the arrears of the disability pension with interest @12% pa to be compounded quarterly with exemplary cost from the date of retirement till date of payment.*
- (d) *Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.*

2. Briefly stated, applicant was enrolled in the Corps of Signals of Indian Army on 31.03.1988 and discharged on 31.05.2021 in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Mhow (Madhya Pradesh) on 06.04.2021 assessed his disability '**COMPRESSIVE MYLOPATHY C4-5**' @20% for life and opined the disability to be **aggravated by service**. However, the net assessment qualifying for disability pension has been reduced due to unwilling for surgery. The applicant's claim for grant of disability pension was rejected vide letter dated 29.09.2021. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that the disability of the applicant has been assessed @20% for life as **aggravated by service**. However, it has been reduced to 10% due to unwilling for surgery by the applicant. 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 although the disability @20% has been regarded as aggravated by service by the RMB but it has been reduced to 10% due to unwilling for surgery by the applicant, hence as per

Regulation 53 of the Pension Regulations for the Army, 2008 (Part – I) the applicant is not entitled to 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 disability of the applicant can be reduced due to unwilling for surgery?
- (b) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. On going through the record, we find that the RMB has assessed applicant's disability @20% for life as aggravated by service, however, degree of disability has been reduced to @10% for life only endorsing that "due to unwilling for surgery". However, considering the facts and circumstances of the case, we are of the opinion that this reasoning of Release Medical Board for reducing the degree of disability of the applicant is cryptic, not convincing and doesn't reflect the complete truth on the matter. We are of the view that success rate of the surgery cannot be assured by the Doctors. We are therefore of the considered opinion that the

disability of the applicant should be considered @20% for life as aggravated by military service as has been opined by the RMB.

7. 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 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."*

8. 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.

9. 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 the next date of hid discharge.

10. In view of the above, the **Original Application No. 458 of 2022** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disability of the applicant is held @20% for life as aggravated by Army 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.

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 06 October, 2022

AKD/-