

RESERVED**COURT No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 19 of 2017**Wednesday, this the 4th day of July, 2018**Hon'ble Mr. Justice SVS Rathore, Member (J)**
Hon'ble Air Marshal BBP Sinha, Member (A)

IC No. 30193A (Retd) Col A.K. Pandey, son of Shri S.C. Pandey, resident of 702, Beverly Park Apartments, New Hyderabad, Lucknow – 226007.

...ApplicantLd. Counsel for the Applicant : **Shri Virat Anand Singh, Advocate**

Vs.

1. Union of India through the Secretary, Ministry of Defence, South Block New Delhi, 110011.
2. Chief of the Army Staff, Integrated HQ of Mod (Army), DHO PO New Delhi-110011.
3. Addl. Dte Gen of Manpower (Policy and Planning)/MP 5&6, Adjutants General's Branch IHQ of MoD (Army), Wing No. 07, IInd Floor, West Block-III, R.K. Puram, New Delhi-66.
4. The Commandant, Command Hospital (Central Command), Lucknow.

..... Respondents

Ld. Counsel for the Respondents:

:Ms. Deepti P Bajpai, Advocate,

Assisted by

:Maj Rajshri Nigam, OIC Legal Cell.

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. Present Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

- (i) *To take on record the composite disability percentage of Applicant.*
- (ii) *To direct the respondent to grant Disability pension (composite assessment) to the Applicant as Applicable.*
- (iii) *To direct the respondents to ROUND-OFF the Disability pension to the applicant as per rounding-off policy.*
- (iv) *To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.*
- (vi) *Allow this application with cost.*

2. Brief facts as emerging from the pleadings on record are that the applicant was commissioned in the Indian Army on 23.12.1973 and after completing service tenure, he superannuated on 30.09.2007. In October 1994 he was diagnosed with OBESITY. In June 1996 the applicant was further diagnosed suffering from OSTEO ARTHRITIS BOTH KNEE. The applicant was provided medical treatment for both the diseases. Applicant’s Release Medical Board was held on 07.05.2007 which assessed OBSEITY (E-66) as NIL and OSTEO ARTHRITIS BOTH KNEE (M.00.9) at 30% for life. However, the Medical Board held that both the disabilities were neither attributable to nor aggravated by Military service. Feeling aggrieved, the applicant preferred First Appeal prayed for grant of disability pension and consideration of disability percentage for OBSEITY. The Appellate

Committee on First Appeals vide order dated 20.04.2010 decided that out of the disabilities OBESITY and OSTEO ARTIRITIS BOTH KNEES, disability OSTEO ARTIRITIS BOTH KNEES should be considered as aggravated by military service with degree of disablement at 30% for life. However, the PCDA (P), Allahabad denied rounding off of 30% disability on the ground that broad banding for computation of disability element is admissible only to officers who have been invalided out of service on medical grounds. Feeling aggrieved, the applicant has preferred the instant O.A.

3. We have heard learned counsel for the parties at length and have perused the record.

4. Learned counsel for the applicant has submitted that in view of various pronouncements of Hon'ble Apex Court as well as various Benches of the Armed Forces Tribunal, the applicant is entitled for relief of rounding off of the disability pension from 30% to 50% so far as the disease OSTEO ARTIRITIS BOTH KNEES is concerned. He further submitted that the respondents may be directed to constitute Medical Board to ascertain the percentage of disability of OBESITY and the rounding off should be done after ascertaining the composite disability of OBESITY and OSTEO ARTIRITIS BOTH KNEE.

5. From the above observations, it is evident that the applicant has prayed for, (i) rounding off of disability pension from 30% to 50% so far as disease OSTEO ARTIRITIS BOTH KNEES is concerned and holding of Re-survey Medical Board for assessing the percentage of disability OBESITY so that composite disability of both disabilities

could be broad banded. We may first take up the issue of disability OBESITY.

6. It may be noticed that OBESITY can be caused by multiple factors; the most common factor for obesity is life style and is linked to food habits and sedentary life style. It can also be triggered by hormonal disturbance, drug abuse, high alcohol intake and lack of proper exercise. But obesity can generally be corrected by placing self restriction on dietary habits, changing life style and proper exercise etc. The Release Medical Board and the Appellate Committee on First Appeals has apparently taken into consideration all these factors while declining to grant disability pension on account of OBESITY and considering it as neither attributable to nor aggravated by military service. We, therefore, do not agree with the contention of learned counsel for the applicant that Re-survey Medical Board should be held to assess the percentage of disability on account of OBESITY and the same should be considered as attributable to military service and both disabilities should be re-arrived at. We would like to add here that the Release Medical Board had originally opined both the disabilities, i.e. OBESITY and OSTEO ARTIRITIS BOTH KNEE to be neither attributable to nor aggravated on the ground that OSTEO ARTIRITIS BOTH KNEE is a result of OBESITY. However, the Appellate Committee on First Appeals after considering all other associated factors conceded disability OSTEO ARTIRITIS BOTH KNEE as aggravated by Military service, but did not accept OBESITY as attributable to or aggravated by military service. Hence, we do not find any merit in the claim of the learned counsel for

the applicant that OBESITY should be re-examined by the Re-survey Medical Board.

7. As far as rounding off of disability is concerned, in the case of *Union of India and Ors vs. Ram Avtar & ors* (Civil Appeal No 418 of 2012 dated 10th December 2014) the Hon'ble Apex Court has nodded in disapproval at the policy of the Government of India in restricting the benefit of rounding off of disability pension only to the personnel who have been invalided out of service on account of being in low medical category. The Hon'ble Apex Court has made it clear that the policy of rounding off is equally applicable to personnel of Armed Forces who are proceeding on retirement or are discharged on completion of term of engagement. In view of the ratio of the judgment the applicant is entitled to the benefit of rounding off of his disability element of pension, hence his disability of 30% for life will stand rounded off to 50% for life.

8. In view of above, the O.A. is hereby **allowed** in part. The impugned orders are set aside. The applicant shall be entitled for disability pension @ 30% for life rounded off to 50% for life from the date of his discharge with arrears which shall be paid to him within a period of four months from today failing which the applicant shall be further entitled to interest at the rate of 9% per annum from the due date, till date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: 4th July, 2018

anb

(Justice SVS Rathore)
Member (J)