

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 794 of 2022**Wednesday, this the 08th day of February, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vide Admiral Atul Kumar Jain, Member (A)”**

No. 9415075-W Ex. Naik Dinesh Shahi of 5/11 GR, C/o 56 APO, son of Tej Bahadur Shahi, resident of House No. 553(i), Village – Tapkeshwar Colony, Post Office- Garhi Cantt., District – Dehradun (Uttarakhand)-248003.

..... Applicant

Ld. Counsel for the : **Shri V.P. Pandey**, Advocate
Applicant Holding brief of
Shri Prakhar Kankan, Advocate
Shri K.K. Singh Bisht, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, Records 11 Gorkha Rifles, PIN-900450, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.

.....Respondents

Ld. Counsel for the : **Shri Pushendra 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) *To issue order or direction to the respondents to summon and set-aside/quash the rejection orders, if any, passed by competent authorities.*
- (b) *To issue order or direction to the respondents to set-aside/quash the rejection order passed by respondent No. 3 vide letter No. 9415075W/Pen-2 dated 06 June 2019 {Annexure No. A-1} being arbitrary and illegal.*
- (c) *To issue order or direction to the respondents to grant disability pension from the next day of discharge for five years from 01 Aug 1996 till 31 July 2001.*
- (d) *To conduct Re-Survey Medical Board to further assess the further disability percentage and to grant the benefits of rounding off of disability element, in the interest of justice.*
- (e) *Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.*
- (f) *Cost of the Original Application be awarded to the applicant.*

2. Briefly stated, applicant was enrolled in the Indian Army on 30.12.1977 and prematurely discharged on 31.07.1996 in Low Medical Category at his own request on compassionate ground under Rule 13 (3) Item III (iv) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 184 Military Hospital, C/o 99 APO on 12.04.1996 assessed his disability '**CSOM LEFT EAR 382, V-67**' @11-14% for five years and opined the disability to be **attributable to** service. The disability claim of the applicant was however rejected by the respondents vide letter dated 06.06.2019 on the ground that it is assessed less than 20%. The applicant preferred application dated 04.10.2021 for holding of Re-Survey medical Board which too was

rejected vide letter dated 26.10.2021. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant submitted that the RMB has assessed the applicant's disability as **attributable to** service @11-14% for five years but the disease with which applicant suffers is a hearing loss and per table at para 20 of Amendment to Chapter VII Assessment of Guide to Medical Officers-2008 (Military Pensions) the degree of disablement in case of hearing loss cannot be assessed less than 20%. 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, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that the RMB has assessed the applicant's disability @11-14% for five years as attributable to service, but since the disability element is less than 20%, therefore, condition for grant of disability pension is not fulfilled in terms of Regulation 173 of the Pension Regulations for the Army, 1961 (Part-I) and Regulation 53 of Pension Regulations for the Army, 2008 (Part – I). Therefore, the respondents have rightly denied the benefit of disability element of disability pension to applicant. He pleaded for dismissal of 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 three folds:-

- (a) Whether the assessment of 11-14% of disability in the case of hearing loss is in accordance with extant rules/guidelines?
- (b) Whether the applicant is entitled to disability pension being a case of discharge on his own request?
- (c) Whether the applicant is entitled for the benefit of rounding off the disability element of disability pension?

6. On careful scrutiny of the documents, we find that the RMB has assessed the applicant's disability @11-14% for five years as attributable to service. In this regard when we see the said provisions, we observe that in the table at para 20 of Amendment to Chapter VII Assessment of Guide to Medical Officers-2008 (Military Pensions) it is clear that degree of disablement in case of hearing loss cannot be less than 20%. Therefore, we are of the view that applicant's disability should be assessed @20% in accordance with rules/guidelines on the subject, issued by the Ministry of Defence.

7. Government of India, Ministry of Defence letter No. 16(5)/2008/D(Pen/Policy) dated 29.09.2009 stipulates that *"In pursuance of Government decision on the recommendations of the Sixth Central Pay Commission vide Para 5.1.69 of their Report,*

President is pleased to decide that Armed Forces personnel who are retained in service despite disability, which is accepted as attributable to or aggravated by Military Service and have foregone lump-sum compensation in lieu of that disability, may be given disability element/war injury element at the time of their retirement/discharge whether voluntarily or otherwise in addition to Retiring/Service Pension or Retiring/Service Gratuity.” In view of aforesaid letter, the applicant is entitled for grant of disability element of disability pension even if he has been discharged on his own request on compassionate grounds.

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. 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 five years to be rounded off to 50% for five years may be extended to the applicant from the next date of his discharge.

10. Since the applicant's RMB was valid for five years from the date of his discharge, hence, the respondents will now have to conduct a fresh Re-Survey Medical Board for him to decide his future eligibility to disability element of disability pension.

11. In view of the above, the **Original Application No. 794 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 five years. The applicant is entitled to get disability element of disability pension @20% for five years which would be rounded off to 50% for five years from the next date of his discharge. The respondents are directed to grant disability element of disability pension to the applicant @20% for five years which would stand rounded off to 50% for five years from the next date of his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. 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 actual payment.

12. No order as to costs.

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

**(Justice Umesh Chandra Srivastava)
Member (J)**

Dated : 08 February, 2023

AKD/-