

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 884 of 2022

Friday, this the 10th day of February, 2023

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”**

Ex. Hav. Jagvir Singh, Service No. 14825174-H, Son of Onkar Singh, H. No. 77, Defence Colony, Phase – 1, PO – Aurangabad, Tehsil – Mathura, District – Mathura, UP-281006.

..... **Applicant**

Ld. Counsel for the Applicant : **Shri V.K. Chahar**, Advocate

Versus

1. Union of India, Represented by – The Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQs of MoD (Army), Post – DHQ, New Delhi-110011.
3. The Officer-in-Charge, ASC Records (South), Bangalore-560007.
4. The PCDA (P), Draupadi Ghat, Allahabad, PIN – 211014 (U.P.).

.....**Respondents**

Ld. Counsel for the Respondents. : **Shri Ashish Kumar Singh**, Advocate
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 :-

- (i) *accept/declare the invalid disease (ID) "Bronchial Asthma" of the Applicant as attributable to or aggravated by the Military Service as admitted by Release Medical Board.*
- (ii) *grant Disability Element of Disability Pension to the Applicant with effect from 01.05.2022 (next date of Discharge) for the Disability @30% with the benefits of Broad Banding with all consequential benefits.*
- (iii) *and pass such further and other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.*

2. Briefly stated, applicant was enrolled in the Army Service Corps of Indian Army on 29.04.1996 and discharged on 30.04.2022 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, Kota on 22.01.2022 assessed his disability '**BRONCHIAL ASTHMA (ICD 10-J45.0)**' @30% for life as **aggravated by service**, which has been reduced to 10% without assigning any reason. The applicant's claim for grant of disability pension was rejected vide letter dated 20.04.2022. The applicant preferred First Appeal dated 10.05.2022 which too was rejected vide letter dated 05.09.2022 which was communicated to the applicant vide letter dated 19.09.2022. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that the applicant's disability has been assessed @20% as **aggravated by service** which has been reduced to 10%. He further submitted that the degree of disablement of cannot be reduced without assigning any reason. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension and its rounding off to 50%.

4. On the other hand, Ld. Counsel for the respondents contended that since the disability qualifying for disability pension with duration of the applicant has been reduced to @10% for life by the RMB, hence in terms of Regulation 53(a) 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 RMB can reduce the degree of disablement without assigning any reason?

(b) Whether the applicant is entitled for the benefit of rounding off the disability pension?

6. In the instant case the disability has been assessed @ 30% for life by the RMB. At page 8 of the RMB proceedings, in the column "*Disease/Disability Qualifying for Disability Pension with duration*" the RMB has reduced the applicant's disability to @10% for life without assigning any reason. We are of the opinion that the degree of disablement cannot be reduced by the RMB without assigning any reason. Accordingly, we hold that the assessment degree of disability is @20% for life.

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 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."

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 element of disability pension @ 30% for life to be rounded off to 50% for life may be extended to the applicant from the next date of his discharge.

10. In view of the above, the **Original Application No. 884 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 degree of disablement of the applicant is held as 30% for life. The applicant is entitled to get disability element @30% 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 @30% for life which would stand rounded off to 50% for life from the next date of 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.

(Maj. Gen. Sannjay Singh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 10 February, 2023

AKD/-