

E-Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 639 of 2021**Tuesday, this the 4th day of January, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

No. 2677001-M, Hav Ram Autar (Retd), Son of Shri Nathu Ram, R/o Village- Nagalaudhi, Post – Bena, Tehsil- Etawah, District- Etawah (U.P.)- 229503.

..... Applicant

Ld. Counsel for the : **Shri Ravi Kumar Yadav, Advocate**
Applicant

Versus

1. Union of India, through Rep by the Secretary, Govt of India, Ministry of Defence, South Block, New Delhi- 110011.
2. The Chief of the Army Staff, Integrated Headquarters of MoD (Army), Post- DHQ, New Delhi - 110011.
3. Addl Dte Gen Personnel Service, Adjutant General’s Branch, IHQ of MoD (Army), ‘A’ Wing, Room No 435, 4th Floor, Sena Bhawan, DHQ PO New Delhi – 110011.
4. OIC Records, The Grenadiers Records, Jabalpur (MP), PIN- 901124, C/o 56 APO
5. Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad – 211014.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Devesh Kumar Mishra,
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 quash and set aside the Respondent No 4 letter No. 2677001/D-Pen dated 10 Nov 2006 and 25 Sep 2021 (Annexure A-1 & A-2 of instant OA & impugned order).*
- (B). *To issue/pass an order or directions of appropriate nature to the respondents to grant disability element to the applicant from the date of his retirement from service (01.11.2006) and to pay the arrears along with suitable rate of interest as deem fit by this Hon’ble Tribunal.*
- (C) *to grant the benefit of rounding off of the disability pension from 20% to 50% in terms of Govt of India letter dated 31 Jan 2001 and to pay the arrears along with suitable rate of interest as deem fit by this Hon’ble Tribunal.*
- (D) *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated facts of the case are that applicant was enrolled in the Indian Army on 30.10.1982 and was discharged from service on 31.10.2006 (AN) on fulfilling the conditions of his enrolment in Low Medical Category P2 (Permanent). At the time of retirement from service, the Release Medical Board (RMB) held at 155 Base Hospital, Assam, on 11.01.2006 assessed his disability "**Perforated Duodenal Ulcer**" @ 15% for life and opined the disability to be attributable to military service. Applicant was granted service pension vide PPO dated 15 September 2006 from the date of retirement. The applicant approached the respondents for grant of disability pension but the same was rejected vide letter dated 10.11.2006 as the disability was assessed less than 20%. Applicant filed appeal against rejection of disability element which was also rejected by the respondents. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant pleaded that at the time of enrolment, applicant was found mentally and physically fit for service in the army and there is no note in the service documents that he was suffering from any disease at the time of enrolment. He submitted that during his 24 years of service, he served in various field/ High Altitude and counter insurgency

areas and soldiers have to work in shift duties, thus environmental condition leads to stress and strain which has affected his health badly. He emphasised that while applicant was posted at Operation Rakshak in Jammu & Kashmir, he was diagnosed disability "**Perforated Duodenal Ulcer**" hence, the aforesaid disability was opined as aggravated by service. He further submitted that claim for the grant of disability pension was wrongly rejected on the ground of disability percentage being less than 20%. Learned counsel for the applicant submitted that Para 61 of Chapter VI of Amendment to Chapter VI & VII of Guide to Medical Officers (Military Pensions), 2008 provides types of Ulcers under the head of Peptic Ulcer. In the instant case applicant disability "**Perforated Duodenal Ulcer**" is a peptic ulcer which cannot be 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 pension as well as arrears thereof and its rounding off to 50%. He relied upon the judgments of Armed Forces Tribunal, Principal Bench, New Delhi, in the cases of **O.A. No 47 of 2017, Lt Gen Sandeep Singh (Retd) vs. Union of India and others**, decided on 18.04.2017 and **O.A. No 1706 of 2018, Sqn Ldr VK Thakur (Retd) vs. Union of India and others**, decided on 10.05.2019. He also relied upon the

judgment of the Hon'ble Apex Court in the case of **Sukhvinder Singh vs Union of India & Ors**, Civil Appeal No. 5604 of 2010, decided on 25.06.2014 and pleaded that he is entitled to grant of disability pension and its rounding off.

4. Rebutting arguments of the applicant, Ld. Counsel for the respondents submitted that applicant is getting service element of pension for his 24 years of service in the army. The disability of the applicant is not due to any injury or outcome of any infection and has been assessed less than 20%. He further submitted that the disability pension claim of the applicant was rightly rejected in terms of Regulation 179 of Pension Regulations for the Army, 1961, Part- I as Release Medical Board has assessed the degree of disablement 15% which is less than the minimum requirement of 20% for grant of disability pension, therefore, the disability pension is inadmissible to the applicant.

5. We have heard learned counsel for the parties and perused the record. The questions which need to be answered are of two folds:-

(a) Whether the applicant is entitled to disability pension despite disability being less than 20%?

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

6. In the instant case, Re-categorization Medical Board held on 12 January 2006 had correctly assessed the applicant's disability @ 20% and opined as attributable to military service in accordance with GMO. So far as disability which is shown to be assessed as less than 20% is concerned, Chapter VI of Amendment to Chapter VI & VII of Guide to Medical Officers (Military Pensions) 2008, provides types of Ulcers under the head of Peptic Ulcer. Para 22 (a) (iii) of Chapter VII of said GMO 2008 stipulates the assessment of complication of Peptic Ulcer treated with surgery which cannot be less than 20%, hence disability of the applicant is treated 20%.

7. The law is settled that even if disability percentage is 20%, it would stand rounded off to 50% (in cases of superannuation also). The case in point relied upon by the Applicant is **Sukhvinder Singh Vs. Union of India**, reported in (2014) STPL (WEB) 468 SC. In para 9 of the judgment Hon'ble Apex Court has held as under:-

"9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly

extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined.....”.

8. It is an undisputed fact that the applicant was enrolled in Indian Army in fully fit condition after rigorous medical examination and the disability was detected for the first time in December 2004 after more than 22 years of army service. The initial presumption that the applicant was physically fit and free from any disease and in sound physical and mental condition at the time of entering into service thus remains unrebutted.

9. On the issue of rounding off of disability pension, we are of the opinion that the case is squarely covered by the decision of ***K.J.S. Buttar vs. Union of India and Others***, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, ***U.O.I. & Anr vs. K.J.S. Buttar*** and ***Union of India vs. Ram Avtar & Others***, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014. Hence the applicant is eligible for the benefit of rounding off.

10. Now, we come to the claim of applicant for arrears of disability pension. On the point of arrears, we would like to

refer to the pronouncements of Hon'ble Supreme Court in the cases of **Shiv Dass versus Union of India** reported in 2007 (3) SLR 445 and **Union of India versus Tarsem Singh**, Civil Appeal No. 5151-5152 of 2008, decided on 13th August, 2008. In both the cases, the Hon'ble Apex Court has observed that in such cases, the arrears should be restricted only to three years before the date of filing of the petition. This OA was filed on 12.10.2021, therefore, the applicant is entitled for arrears from 12.10.2018.

11. In view of the above, the Original Application deserves to be allowed, hence **allowed**. The impugned orders rejecting claim for grant of disability element are set aside. The applicant is already in receipt of service element hence respondents are directed to grant disability element of the pension @ 15% deemed to be 20% for life, which shall stand rounded off to 50% from three years prior to filing of Original Application. The entire exercise shall be completed by the respondents within four months from the date of production of a certified copy of this order, failing which the respondents shall be liable to pay interest at the rate of 8% to the applicant on the amount accrued till the date of actual payment.

12. No order as to costs.

13. Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) **Member (J)**

Dated : 04 January, 2022

Ukt/-