

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 567 of 2022**Tuesday, this the 10th day of January, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 2993627-M Ex. Hav. Sanjeev Kumar Tomar, S/o Shri (Late) Kiran Singh, R/o Village – Badhla Kaithwara, PO – Sisoli, Tehsil – Meerut, District – Meerut (UP)-250004.

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

Versus

1. The Union of India Rep. by the Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of MoD (Army), Post – DHQ, New Delhi-110011.
3. Officer-in-Charge, Records, The Rajput Regiment, PIN-900427, C/o 56 APO.
4. PCDA (P) (Army), Draupadi Ghat, Allahabad (UP)-212114.

.....RespondentsLd. Counsel for the : **Shri Yogesh Kesarwani** , 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 quash and set aside the Respondent No. 3 letter No. 2993627 M/DP/PG dated 10 Mar 2021 (Impugned*

Order and annexed as Annexure A-1) wherein applicant was rejected for grant of disability element.

- B. to issue/pass an order or direction of appropriate nature to the respondents to grant disability element to the applicant @15%, deemed to be 20% for life, which should stand rounded off to 50% (in terms of Govt. of India letter dated 31 Jan 2001) for life from the date of discharge i.e. 01.03.2021 and to pay the arrears along with suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal.*
- C. Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated, applicant was enrolled in the Rajput Regiment of Indian Army on 23.02.1995 and discharged on 28.02.2021 in Low Medical Category on completion of terms of terms of engagement 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, Bareilly on 21.12.2020 assessed his disability '**SENSORINEURAL HEARING LOSS B/L NOISE INDUCED (H90.93)**' @15% for life and opined the disability to be **aggravated by** service. The disability claim of the applicant was however rejected by the respondents vide letter dated 10.03.2021 on the ground that it is assessed less than 20%. The applicant preferred First Appeal dated 05.07.2021 but of no avail. 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 **aggravated by** service

@15% for life 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 @15% for life as aggravated by service, but since the disability element is less than 20%, therefore, condition for grant of disability pension is not fulfilled in terms of 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 two folds:-

- (a) Whether the assessment of 15% of disability in the case of hearing loss is in accordance with extant rules/guidelines?
- (b) 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 @15% for life as aggravated by 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. 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. 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 from the next date of his retirement.

9. In view of the above, the **Original Application No. 567 of 2022** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant held @20% for life. The applicant is entitled to get disability element of disability pension @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 of disability pension 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 actual payment.

10. No order as to costs.

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

Dated : 10 January, 2023

AKD/-