

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 596 of 2020**Wednesday, this the 22<sup>nd</sup> day of September, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**No. JC-348703X Ex. Sub. Ram Fere Shakya, S/o Late Lallu Lal,  
A-6/1407 Saviour Greenisle Crossing Republic, Ghaziabad, Pin-  
201016 (UP).

..... Applicant

Ld. Counsel for the : **None**  
Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence,  
New Delhi-110011.
2. The Chief of the Army Staff, Integrated HQs of MoD (Army),  
South Block, New Delhi-110001.
3. Officer in Charge, Records Bombay Engineer Group, Pin  
908796, C/o 56 APO.
4. PCDA (P), Draupadi Ghat, Allahabad, Pin-211014 (UP).

.....**Respondents**Ld. Counsel for the : **Shri Ashish Kumar Singh**, 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/pass an order or directions to the respondents to grant benefit of rounding/ broad banding of disability element of disability pension from 01.03.2013 to 31.12.2015 @30% to @50% along with arrear, and interest @18% p.a. on arrear in the light of Judgment and order of Hon’ble Apex Court, and Hon’ble AFT (RB), Lucknow, and the Govt of India Policy letter dated 31.01.2001.*
- B. *To issue/pass an order or directions to the respondents to decide the representation dated 12.06.2020 submitted by the applicant.*
- C. *To issue/pass any other order or direction as this Hon’ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- D. *To allow this original applicaton with costs.*

2. Briefly stated, applicant was enrolled in the Indian Army on 02.09.1983 and was discharged on 28.02.2013 (AN) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at 167 Military Hospital on 10.12.2012 assessed his disability

**‘COMMUNUTED FRACTURE TIBIAL PLATEAU (LT)’ @ 30%** for life and opined the disability to be attributable to military service. Accordingly, the applicant was granted disability element @30% for life with effect from 01.03.2013 vide P.P.O. dated 02.06.2013 which has been rounded off with effect from 01.01.2016. The applicant’s claim for rounding off of disability element from 01.03.2013 to 31.12.2015 has not been granted by the respondents. It is in this perspective that the applicant has preferred the present Original Application.

3. The applicant pleaded that at the time of enrolment, the 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 in Army. The disease/injury of the applicant was contacted during the service and it is opined by the RMB as attributable to military service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant is entitled to rounding off of disability element from 30% to 50% from 01.03.2013 to 31.12.2015 also.

4. On the other hand, Ld. Counsel for the respondents contended that on the application being submitted by the applicant the disability element has been rounded off to 50% with effect from 01.01.2016 in terms of Principal Controller of Defence Accounts (Pension), Prayagraj (Allahabad) Circular No. 596 dated

09.02.2018 and Government of India, Ministry of Defence letter No.17(01)/2016-D(Pen/Policy) dated 23.01.2018. He pleaded for dismissal of the Original Application.

5. We have heard Ld. Counsel for the respondents. We have also gone through the records and we find that the only question which needs to be answered is whether the applicant is entitled for the benefit of rounding off the disability element of disability pension from 01.03.2013 to 31.12.2015?

6. It is observed that claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

*“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”*

7. As such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass (supra)**, we are of the considered view that benefit of rounding off of disability element from 30% to 50% may

be extended to the applicant only from three preceding years from the date of filing of the Original Application and the date of filing of Original Application is 11.11.2020. We further observed that the applicant's disability element has already been rounded off from 01.01.2016 in terms of Principal Controller of Defence Accounts (Pension), Prayagraj (Allahabad) Circular No. 596 dated 09.02.2018 and Government of India, Ministry of Defence letter No.17(01)/2016-D(Pen/Policy) dated 23.01.2018. As such the applicant is not entitled for grant of rounding off of disability element from 01.03.2013 to 31.12.2015.

8. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**

9. No order as to costs.

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

Dated : 22 September, 2021

AKD/-