

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****TRANSFERRED APPLICATION No. 12 of 2023**Thursday, this the 20th day of April, 2023**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

Service No. 797093-H, Sgt. Naveen Kumar (Retd.) S/o Mr. Shyam Sunder Saraswat, Village – Tarapur, Post – Gonda, District – Aligarh, Uttar Pradesh, Pin -202123.

..... ApplicantLd. Counsel for the : **Shri Vinay Pandey**, Advocate.

Applicant

Holding brief of **Shri Raj Kumar Mishra**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Room No. 101 A, South Block, DHQ PO, New Delhi, Pin 110011.
2. Chief of the Air Staff, Air HQ (Vayu Bhawan), Rafi Marg, New Delhi -110106.
3. Air HQ Dte of air Veterans, Subroto Park, New Delhi - 110010.
4. Joint Controller of Defence Accounts (Air Force), Subroto Park, New Delhi -110010.

.....RespondentsLd. Counsel for the : **Ms. Anju Singh** , Advocate

Respondents.

Central Govt. Counsel

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007, before the Armed Forces Tribunal, Principal Bench, New Delhi, which has been transferred

to this Tribunal and has been renumbered as Transferred Application No. 12 of 2023, for the following reliefs:-

- (a) *Quash and set aside the RMB Proceedings conducted in respect of Application to the extent that the percentage of disability was assessed improperly and in the violation of Guidelines mentioned in Guide to Medical Officers 2008 by the RMB.*
- (b) *Direct the Respondents to grant disability pension to the Applicant by treating the percentage his disability @20% in the light of para -20 of GMO 2008 (Annexure A-6) and Judgment dated 26 July 2019 passed in OA 1288/2017 titled as Ex HFO Jaipal Singh Vs Uol (Annexure A-7).*
- (c) *Direct the respondents to give arrears on the disability element of disability pension to the Applicant @12% from the date of release from service.*
- (d) *Pass any other Order(s) or /and direction(s) in favour of the Applicant which may deemed just and proper under the facts and circumstances of the case in the interest of justice.*

2. Briefly stated, applicant was enrolled in the Indian Air Force on 14.12.2000 and discharged on 31.12.2020 in Low Medical Category on completion of terms of terms of engagement after rendering 20 years and 18 days of regular service. At the time of discharge from service, the Release Medical Board (RMB) held at

SMC 14 Wing Air Force on 14.02.2020 assessed his disability '**RIGHT ACUTE OTITS MEDIA WITH MIXED HEARING LOSS ICD H66.9, Z09.0**' @10% for life and opined the disability to be **attributable to service**. The disability claim of the applicant was however rejected by the respondents vide letter dated 29.10.2020 which was communicated to the application vide letter dated 19.11.2020 on the ground that it is assessed less than 20%. The applicant served Legal Notice but of no avail. It is in this perspective that the applicant has preferred the present Transferred Application.

3. Learned Counsel for the applicant submitted that the RMB has assessed the applicant's disability as **attributable to service** @10% 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 @10% for life 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 153 of Pension Regulations for the Indian Air Force, 1961 (Part – I). Therefore, the respondents have rightly denied the benefit of disability element of disability pension to applicant. She pleaded for dismissal of Transferred 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 10% 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 @10% for life 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. 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 invalidated 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 discharge.

9. In view of the above, the **Transferred Application No. 12 of 2023** deserves to be allowed, hence **allowed**. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disability of the applicant is 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 Atul Kumar Jain)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated :20 April, 2023

AKD/Ashok/-